TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible]5

No. [illegible]54

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

GIUSEPPE ERICO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Supreme Court of the United States

OCTOBER TERM, 1965

No. 898

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

vs.

GIUSEPPE ERRICO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

[fol. 1]

BEFORE THE IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES DEPARTMENT OF JUSTICE

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of

GIUSEPPE ERRICO, Respondent.

9-27-63

I certify that on this date I read and explained the entire contents of this document to the respondent in the Italian language, and that he stated he understood.

/s/ Mary Colasuonno
MARY COLASUONNO
Interpreter

File No. A-11 925 754

ORDER TO SHOW CAUSE AND NOTICE OF HEARING—
September 11, 1963

TO: GIUSEPPE ERRICO
(name)

1808 S. E. Clinton Street
(address)

Portland, Oregon

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Italy and a citizen of Italy;

3. You last entered the United States at New York, N.Y., on or about October 17, 1959;
(date)

4. You were admitted to the United States as a first preference quota immigrant based upon a visa petition submitted by West Slope Motors, Portland, Oregon;

5. The visa petition was approved on June 18, 1959, upon the presentation of affidavits from Italy alleging that you were a person of specialized experience as a specialized mechanic and tune-up man on motors produced in Italy;

6. You were not a specialized mechanic and tune-up man as alleged.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

> Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are not of the proper status under the quota specified in the immigrant visa, under Section 211 (a)(4) of the Act.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at Room 322, U. S. Court House, Portland, Oregon, on September 27, 1963, at 1:00 p.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: September 11, 1963

IMMIGRATION AND NATURALIZATION SERVICE

/s/ Alfred J. Urbano
ALFRED J. URBANO, District Director
(signature and title of issuing officer)
Portland, Iregon
(City and State)

[fol. 2]

BEFORE THE
IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES DEPARTMENT OF JUSTICE

File: A11-925-754—Portland, Oregon

IN DEPORTATION PROCEEDINGS

In The Matter Of

GIUSEPPE ERRICO, RESPONDENT

CHARGES:

I & N Act—Section 241(a)(1)—Excludable at entry under Section 211(a)(4)—Not of proper status under quota specified in the immigrant visa.

APPLICATION: Waiver of excludability, Section 211(c), I & N Act.

IN BEHALF OF RESPONDENT:

Frank M. Ierulli, Attorney
708 Equitable Building
Portland, Oregon

IN BEHALF OF SERVICE:

B. G. Greenwald
Trial Attorney
Seattle, Wash.

DECISION OF THE SPECIAL INQUIRY OFFICER—
January 31, 1964

The respondent is a 29 year old married male. He admits, as alleged in the order to show cause, that he is a native and citizen of Italy who entered the United States at New York, N.Y., October 17, 1959, as a selected immigrant under the first preference of the Italian immigration quota, whose status as such was based on a visa peti-

tion submitted by the West Slope Motors, Portland, Oregon, approved June 18, 1959 after presentation of affidavits from Italy representing that he was a specialized mechanic and motor tune-up man on motors produced in Italy. He denied the allegation that he was not a specialized mechanic and tune-up man as claimed.

[fol. 3] The respondent's right to admission at the time of his arrival in the United States depended upon his qualification for preference quota status under the provisions of Section 203(a)(1)(A) as a quota immigrant whose services are determined by the Attorney General to be needed urgently in the United States because of .... technical training, specialized experience or exceptional ability .... substantially beneficial prosectively to the national economy .... of the United States. Those not entitled to such classification are inadmissible.[1] This is so whether the government was misled in granting the status or not.[2] Those who succeed in gaining entry are deportable under the provisions of Section 241(a)(1) of the Act.

The issue of fact raised by the charge and the pleading is whether the respondent was in fact a specialized mechanic and motor tune-up man on motors produced in Italy. The respondent by his own admissions established that he was, with the exception of his army service in Italy, a farmer by occupation, engaged in running the family farm. There was no machinery or tractors on this farm and the family did not have a car. The respondent, prior to coming to the United States, worked without pay at a garage in Italy part time for a few months. There is abundant evidence from the employer he was destined to work for in the United States (Ex. 12), the testimony of members of his family and his own testimony, prior to (Ex. 5) and during the hearing (Tr., p. 66), that he was not a specialized mechanic and motor tune-up man on motors produced in Italy. The evidence disclosed that he never became more than an unpaid apprentice in a small garage for a short period of time, never having worked as

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[1] Section 205(d), and Section 211(a)(4), I & N Act.

[2] *Matter of T-*, 8 I & N Dec. 500 (12-10-59).

[fol. 4] a qualified mechanic, much less as a specialist on various motors made in Italy. It is clear from the evidence that the respondent was not entitled to admission to the United States October 17, 1959 at New York, N.Y., and is therefore deportable on the charge in the order to show cause. The respondent designated Italy as the country of his choice in the event he is deported from the United States.

The respondent applied for relief from deportation under the authority contained in Sections 211(c) and (d) of the Immigration and Nationality Act of 1952, which provides in pertinent part as follows: "The Attorney General may in his discretion . . . . admit to the United States any otherwise admissible immigrant not admissible under clause . . . .(4) of subsection (a), if satisfied that such inadmissibility was not known and could not have been ascertained by the exercise of reasonable diligence by such immigrant prior to the departure of the vessel or aircraft from the last port outside the United States . . . . prior to the application of the immigrant for admission".

The October 17, 1959 entry was the respondent's only entry into the United States. He has lived continuously in Portland, Oregon since that time. On October 26, 1959 he commenced work at the West Slope Motors, Inc., the company that petitioned to bring him to the United States as a first preference immigrant. He remained there three months and, as the record discloses, he failed to measure up to the requirements of a specialized mechanic. On August 29, 1960 he was employed by the Victory Plating Works, Inc., Portland, Oregon, where he has since been continuously working. The respondent's wife resides with him in Portland, Oregon. She accompanied him to the United States in October 1959. They have one child, born in Portland, Oregon on August 3, 1960.

[fol. 5] In addition to his wife and child, the respondent's entire family resides in the United States. He is the eldest of six children. His parents and all his brothers and sisters reside in the United States. With the exception of one aunt, all of his close relatives reside here.

The respondent's mother, wife, brother, and sister testified at the hearing. They told of the respondent's early background in Italy and spoke with candor concerning his qualifications, especially as a mechanic. It was pointed out that the respondent, as the eldest son in the family, took the place of the father as the head of the family and ran the family farm in Italy while the respondent's father was absent in Argentina. They appear to be an unusually devoted family and, as is understandable, were deeply concerned about the welfare of the respondent and his family.

There was introduced into evidence two complaints filed in the Municipal Court for the City of Portland, Oregon, on April 17 and 26, 1963, charging the respondent with the commission of a disorderly act and disturbance of the peace by lewdly exposing the private parts of his person March 15, 1963 and April 16, 1963. The latter complaint, although filed under the same ordinance, charged that the exposure was to a female child. The Municipal Court, on June 20, 1963, found the respondent guilty of the April 16th offense and sentenced him to imprisonment in the City Jail for a period of one hundred eighty days, suspending the sentence on the condition that he receive psychiatric treatment and that his attorney see that the doctor's progress report would reach the court after the expiration of sixty and one hundred eighty days. It appears that the court subsequently amended its judgment to merely provide that after a plea of not guilty, [fol. 6] that the said case be continued for one hundred eighty days. The testimony of the attending psychiatrist was heard. He testified that the respondent had a neurosis precipitated by feelings of inadequacy and insecurity produced by stress in adjusting to his new environment. The doctor testified that he was responding well to treatment, and that he felt the condition was controlled and should not recur.

On September 5, 1961 the respondent made a sworn statement before an investigator of the Immigration and Naturalization Service at Portland, Oregon. The statement was made through an Italian interpreter, and the respondent's attorney was present. At the time this state-

ment was taken the respondent was unwilling to acknowledge that he was not a specialized mechanic on foreign cars and motors as the government maintained. In a subsequent affidavit made by the respondent February 27, 1962, he acknowledged that he testified falsely on the occasion of the previous statement.

In considering the respondent's application for relief under the provisions of Section 211(c) of the Immigration and Nationality Act, it is unnecessary to determine whether or not the relief should be granted as a matter of discretion because it is clear that he is not eligible for the relief specified in the statute. The statute provides that the relief may be granted only in those cases where the Attorney General is satisfied that the inadmissibility (in the respondent's case, his lack of qualifications as an expert mechanic on foreign motors) was not known and could not have been ascertained by the exercise of reasonable diligence by such immigrant prior to the departure of the vessel or aircraft from the last port outside the United States. It is clear that the respondent in this case [fol. 7] knew of his lack of qualifications prior to his departure and therefore could not qualify for a waiver under Section 211(c) of the Immigration and Nationality Act.

There remains, however, another consideration in this case, and that is whether or not the provisions of Section 241(f) are applicable. It is clear that the visa in this instance was procured by fraud or misrepresentation. The deportation charge, that the respondent is deportable under the provisions of Section 241(a)(1) as an alien who at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry, particularly, Section 212(a)(19), relating to aliens who have procured a visa or other documentation by fraud or by willfully misrepresenting a material fact, was not urged. Section 241(f) provides that "the provisions of this section"—referring to Section 241(a) of the Immigration and Nationality Act—"and to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens *who have procured a visa or other docu-*

mentation, or entry to the United States, by fraud or misrepresentation, shall not apply to an alien *otherwise admissible at the time of entry,* who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence."

The respondent has established the necessary relationship to come within the provisions of Section 241(f). Several questions, however, remain. The first, whether the provisions of Section 241(f) would apply to his case because he is charged with inadmissibility under the provisions of Section 211(a)(4) of the Immigration and Nationality Act relating to aliens who at entry were not of the proper status specified in the immigrant visa, rather than under Section 212(a)(19), aliens who pro- [fol. 8] cured a visa by fraud or willfully misrepresenting a material fact. The Board of Immigration Appeals, in the *Matter of K-*, 9 I & N Dec. 585, 589, March 9, 1962, reaffirmed the previous order in *Matter of S-*, 7 I & N Dec. 715, holding that the section of law under which the deportation charge is laid is immaterial. The Board, in *Matter of K-*, stated:

> "There are, however, other provisions of section 241 (a) which render an alien deportable after entry on charges which flow directly from the entry by fraud or misrepresentation. The two charges set forth in section 241(a)(2) come within this category. Since section 241(f) describes in *general terms* aliens whose documentation or entry was procured by fraud or misrepresentation, we are of the opinion that it was the intent of Congress to save from deportation those aliens who were admissible except for the fact that they had made fraudulent statements regardless of the provision of the statute under which their deportation is sought."

It is concluded that the fact that the charge, excludable at entry for fraud or misrepresentation, is not urged, would not disqualify the respondent from the benefits of Section 241(f).

The next question concerns the language in Section 241(f) which specifies that the benefits of the provision apply only to aliens otherwise admissible at the time of

entry. The respondent was also excludable at the time of admission under the provisions of Section 212(a)(20) because he did not have a valid immigrant visa. Documentary requirements can not be waived unless such waiver is specifically conferred by statute.[3] The statute provides for two types of waivers, a waiver of documents for a returning resident under Section 211(b) of the Immigration and Nationality Act (8 U.S.C. 1181(b)), which does not apply to the respondent's case, and a waiver of certain defects in the visa under the provisions of Section 211(c) (8 U.S.C. 1181(c)), which has been [fol. 9] considered above and found to be inapplicable to the respondent's case. There being no provision for a waiver in the statute, the respondent would not be otherwise admissible as required by the provisions of Section 241(f) and therefore not eligible for the relief from deportation provided in that section, unless that section could be construed to mean that the language of the section implies a waiver where the alien has the requisite relatives in the United States. The Board, in *Matter of K-*, did not go this far. The alien in that case was a returning resident and a waiver was granted under the provisions of Section 211(b). I find that the respondent does not come within the provisions of Section 241(f) of the Immigration and Nationality Act.

Since this case presents a novel question not decided by the Board, it will be certified to the Board for final decision.

ORDER: It is ordered that the respondent be deported from the United States to Italy on the charge contained in the order to show cause.

IT IS FURTHER ORDERED that this case be certified to the Board of Immigration Appeals for review and final decision.

/s/ John W. Keane
JOHN W. KEANE
Special Inquiry Officer

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[3] *Polymeris* v. *Trudell*, 284 U.S. 279, 52 S. Ct. 143, 76 L. Ed. 291 (1932).

[fol. 10] BEFORE THE
BOARD OF IMMIGRATION APPEALS
UNITED STATES DEPARTMENT OF JUSTICE

File: A 11 925 754—Portland, Oregon

In re: GIUSEPPE ERRICO

IN DEPORTATION PROCEEDINGS

CERTIFICATION

IN BEHALF OF RESPONDENT:
Frank M. Ierulli, Esquire
708 Equitable Building
Portland, Oregon

CHARGE

Order: Section 241(a)(1), I&N Act [8 USC 1251 (a)(1)]—Excludable at entry under Section 211(a)(4)—Not of proper status under quota specified in the immigrant visa.

Lodged: None

APPLICATION: Waiver of excludability, Section 211 (c), Immigration and Nationality Act

DECISION—April 20, 1964

In an opinion dated January 31, 1964, the Special Inquiry Officer ordered the deportation of the respondent and certified his opinion to this Board for a final decision.

The respondent is a 29 year old married male alien, native and citizen of Italy who entered the United States on October 17, 1959, under the first preference of the Italian immigrant quota as a specialized mechanic and motor tune-up man on motors produced in Italy. The Order to Show Cause charges that he was excludable at entry under Section 211(a)(4) because he was not of the proper status under the quota specified in the immigrant visa. In finding the charge sustained the Special Inquiry Officer concluded on the basis of the record and

the testimony that the respondent was not in fact a specialized mechanic and motor tune-up man on motors [fol. 11] produced in Italy. Accordingly, he was not eligible under the first preference of the Italian quota. Our review of the record supports this conclusion and it is our belief that the charge contained in the Order to Show Cause is sustained.

The issue presented by the certification of the Special Inquiry Officer is whether the respondent is eligible for and should be granted a waiver of the excluding provisions of Section 211(a)(4) of the Immigration and Nationality Act. The Special Inquiry Officer found that the respondent was clearly not eligible for this relief, inasmuch as the respondent could not possibly show that his inadmissibility as a specialized mechanic was not known to him and could not have been ascertained by the exercise of reasonable diligence prior to his departure for the United States. The Special Inquiry Officer, therefore, inas much as he found the respondent would be statutorily ineligible for such relief did not reach the issue of discretion in the granting of such relief.

The decision of the Special Inquiry Officer considered the applicability of Section 241(f) of the Immigration and Nationality Act. It is his conclusion that the necessary relationship has been established and, further finds that despite the absence of a charge based upon Section 212(a)(19) of the Immigration and Nationality Act, this absence would not disqualify the respondent from the benefits of Section 241(f). He continues in his finding that the respondent was excludable at the time of his admission under Section 212(a)(20) inasmuch as he did not have a valid immigrant visa. Inasmuch as the respondent is ineligible for a waiver of such, the Special Inquiry Officer concludes that Section 241(f) could not apply to him.

The Trial Attorney in a memorandum in support of the decision of the Special Inquiry Officer, urges that Section 241(f) of the Act has no applicability to this case, and that the only issue presented is the respondent's application for a waiver under Section 211(c). He contends if a waiver is not granted the respondent is not "otherwise admissible at the time of entry" and conse-

quently the issue of fraud will not be reached. It is his claim that the fraud involved in the particular circum-
[fol. 12] stances in this case is important only on the issue of eligibility for the waiver in that the respondent has failed to show compliance with the statute. Counsel for respondent in a brief filed before this Board urges that we find the respondent eligible for relief under Section 241(f). He contends that inasmuch as there was no charge lodged against the respondent under Section 212(a)(20) we must conclude the visa issued to the respondent was valid on its face and, therefore, as a matter of law, the respondent is entitled to relief under Section 241(f).

We have carefully reviewed the record in this case. The Trial Attorney has asked us to rule on the propriety of considering the applicability of a waiver under 241(f) in these circumstances. Our approval of the Special Inquiry Officer's decision terminates at the point wherein he has denied the waiver for relief under Section 211(c). Such denial adequately disposes of the issue in this case. discussion as to the propriety of considering the applicability of Section 241(f) waiver would be meaningless and inappropriate. Furthermore, this record, in its present posture simply does not warrant such excursion.

Finally we are not unaware of the appealing features regarding the respondent's wife and United States citizen child, both of whom are residents of the United States. We further note that the respondent's parents and all his brothers and sisters are residents of the United States. These equities, however, cannot in any way be a factor in the disposition of the case, for, as stated above, he is ineligible for a waiver under Section 211(c) of the Act.

For the above reasons we will affirm the opinion of the Special Inquiry Officer.

ORDER: It is ordered that no change be made in the decision of the Special Inquiry Officer which has been certified to this Board for review.

/s/ Thos. G. Finucane
Chairman

[fol. 13]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19,282

[File Endorsement Omitted]

GIUSEPPE ERRICO, PETITIONER

vs.

UNITED STATES DEPARTMENT OF JUSTICE, Immigration and Naturalization Service, RESPONDENT

PETITION FOR REVIEW—Filed May 7, 1964

Comes now Petitioner, Giuseppe Errico, by Frank Ierulli and Gerald H. Robinson, his attorneys, and for his Petition for Review, states as follows:

I

That this Court has jurisdiction of this cause by authority of Section 106 of the Immigration and Nationality Act, being an Act of Congress of September 26, 1961, Public Law 87-301, Section 5 (a) 75 Stat. 651.

II

That Petitioner is a national of Italy, residing within the territorial boundaries of this Court, namely at Portland, Oregon.

III

The Petitioner entered the United States pursuant to an Immigrant Visa on October 17, 1959, and ever since that time has been a resident of the United States of America.

IV

That the Respondent has required the Petitioner herein [fol. 14] to show cause why he should not be deported

pursuant to the Immigration and Nationality Act, Sections 241(a)(1) and Section 211(a)(4), and the said Respondent has ruled that the Petitioner is excludable and deportable thereunder, by virtue of a decision of the Special Inquiry Officer dated January 31, 1964, which opinion was affirmed by the Board of Immigration Appeals dated April 20, 1964.

V

That by virtue of said decisions, the Respondent has threatened to forthwith deport the Petitioner from the United States of America and return him to Italy.

VI

That the foregoing decision of the Special Inquiry Officer and the Board of Immigration Appeals is illegal and contravenes the Statutes of the United States of America in such cases made, and the threatened deportation of the Petitioner to Italy is illegal and not authorized by law, in that Petitioner is entitled to relief under Section 241(f) of the Immigration and Nationality Act, 8 USCA 1251(f).

VII

Petitioner's wife is a resident legally admitted to the United States, and his son is a native-born citizen of the United States, and all of Petitioner's brothers and sisters are residents of the United States.

VIII

That Petitioner has exhausted his administrative remedies.

WHEREFORE, your Petitioner prays for a Decree of this Court as follows:

[fol. 15] 1. Ruling that Petitioner is entitled to the benefits of Section 241(f) of the Immigration and Nationality Act and that he is not excludable or deportable.

2. That the Respondent be restrained and enjoined from deporting the Petitioner to Italy or to any other place.

3. And for such other and further relief as may seem just and equitable in the premises.

/s/ GERALD H. ROBINSON
FRANK IERULLI and
GERALD H. ROBINSON
Attorneys for Petitioner

[Proof of service (omitted in printing)]

[fol. 16]

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,282

GIUSEPPE ERRICO, PETITIONER

vs.

IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT

Before: MERRILL, DUNIWAY, and ELY, Circuit Judges

OPINION—July 9, 1965

ELY, Circuit Judge:

Petitioner, now thirty-one years of age, emigrated from his native Italy and, with his wife, gained admission to the United States on October 17, 1959. His parents and all of his brothers and sisters reside in this country, and his son, an American citizen, was born here on August 3, 1960. He was admitted as a selected immigrant under the first preference of the Italian immigration quota. The status was approved under the authority of Section 203 (a) (1) (A) of the Immigration and Nationality Act (8 U.S.C. 1153 (a) (1) (A)). The visa petition had been submitted by a motor company of Portland, Oregon, and was supported by representations, in the form of affidavits originating in Italy, that the petitioner was a specialized mechanic and motor tune-up man on motors of Italian manufacture. Eight days after his arrival in New York City, the petitioner commenced his employment with the Portland motor company. The record reveals that he was given the assignment of performing work on German motors with tools which were strange to him. He remained in this employment for only three months, having failed, according to a finding of the Special Inquiry Officer, "to measure up to the requirements of a specialized mechanic." On August 29, 1960, [fol. 17] he entered the employ of Victory Plating Works,

Inc., of Portland, and he has remained continuously in such employment.

On September 11, 1963, the Immigration and Naturalization Service issued an Order to Show Cause and Notice of Hearing In Deportation Proceedings in which it was alleged that petitioner was "not a specialized mechanic and tune-up man as alleged. And on the basis of the foregoing * * *, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

> Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are not of the proper status under the quota specified in the immigrant visa, under Section 211 (a)(4) of the Act."

A hearing followed, and while it was shown that before he left Italy, and in anticipation of his prospective employment in the United States, the petitioner worked for a few months as an unpaid apprentice in an Italian garage, there was ample evidence to support a finding by the Special Inquiry Officer that the petitioner, at the time of his entry into the United States, was not a qualified automobile mechanic or a specialist in motors of Italian manufacture.

The petitioner sought relief from deportation under the provisions of Section 211(c) and (d) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1181(c)(d)), which provide, in effect, that the Attorney General may, in his discretion, grant relief to an inadmissible alien "if satisfied that such inadmissibility was not known and could not have been ascertained by the exercise of reasonable diligence by such immigrant" prior to his entry to the United States. The petitioner's application for this relief was denied upon the ground that the petitioner knew of his lack of qualifications prior to his departure from Italy and consequently could not qualify for favorable discretionary action under the provisions of Section 211(c). It is our opinion that the Special Inquiry Officer

properly applied Section 211(c) and that the denial of relief under this Section, affirmed by the Board of Immigration Appeals, was correct.

[fol. 18] In all stages of the proceedings, the petitioner has insisted that he is saved from deportation by Section 241(f), Immigration and Nationality Act (8 U.S.C. 1251 (f)), which provides:

> "The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens *who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation* shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence." (Emphasis added)

It is important to note that the italicized language has been adopted from Section 212(a)(19) (8 U.S.C. 1182 (a)(19)), one of many sections designating classes of aliens who "shall be ineligible to receive visas and shall be excluded from admission into the United States:". We have seen that the petitioner is a parent of a United States citizen and the child of aliens lawfully admitted for permanent residence. It is also established that the petitioner procured "visas or other documentation, or entry into the United States by fraud or misrepresentation." Against the petitioner, it has been contended that in the Order to Show Cause, he was not charged with being inadmissible because of the provisions of Section 211(a)(19) relating to aliens who have gained entry by fraud or misrepresentation, but with inadmissibility under the provisions of Section 211(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1181(a)(4)) which reads:

> "(a) No immigrant shall be admitted into the United States unless at the time of application for admission he * * * (4) is of the proper status under the quota specified in the immigrant visa, * * *".

This contention, carefully considered by the Special Inquiry Officer, was correctly treated in his decision as follows:

> "The respondent has established the necessary relationship to come within the provisions of Section 241(f). Several questions, however, remain. The first, whether the provisions of Section 241(f) would apply to his case because he is charged with inad-
> [fol. 19] missibility under the provisions of Section 211 (a)(4) of the Immigration and Nationality Act relating to aliens who at entry were not of the proper status specified in the immigrant visa, rather than under Section 212(a)(19), aliens who procured a visa by fraud or willfully misrepresentating a material fact. The Board of Immigration Appeals, in the *Matter of K—*, I & N Dec. 585, 589, March 9, 1962, reaffirmed the previous order in *Matter of S-*, 7 I & N Dec. 715, holding that the section of law under which the deportation charge is laid is immaterial. The Board, in *Matter of K—*, stated: 'There are, however, other provisions of Section 241(a) which render an alien deportable after entry on charges which flow directly from the entry by fraud or misrepresentation. The two charges set forth in Section 241(a)(2) come within this category. Since Section 241(f) described in *general terms* aliens whose documentation or entry was procured by fraud or misrepresentation, we are of the opinion that it was the intent of Congress to save from deportation those aliens who were admissible except for the fact that they had made fraudulent statements regardless of the provision of the statute under which their deportation is sought.'
>
> It is concluded that the fact that the charge, excludable at entry for fraud or misrepresentation, is not urged, would not disqualify the respondent from the benefits of Section 241(f)."

It would therefore appear that petitioner, as an alien who "procured a visa or other documentation or entry into the United States by fraud or misrepresentation" and

"who is the * * * parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence", is saved from deportation by the provisions of Section 241(f) (8 U.S.C. 1251(f)) if he was "otherwise admissible" at the time of his entry. The Special Inquiry Officer concluded that since this issue of statutory construction "presents a novel question not decided by the Board", it would be "certified to the Board of Immigration Appeals for review and final decision". The Board held that since the petitioner's application for discretionary relief by waiver under Section 211(c) was not granted, he could not be "otherwise admissible at [fol. 20] the time of entry" and that "Section 241(f) of the Immigration and Nationality Act has no applicability to this case and need not have been discussed".

We disagree with the Board. Fair interpretation of the legislative history of the Section, its terms, and its relation to other statutes *in pari materia* lead to the conclusion that it is operative to spare the petitioner from deportation. Under its plain terms, the Section purports to grant absolute relief to aliens who have close familial ties in the United States and who have gained entry into the United States through "fraud or misrepresentation". Its benefits are not made dependent upon the exercise of discretion by the Attorney General in the granting of a waiver or in any other manner. It was enacted on September 26, 1961 and modified the terms of a portion of a statute, simultaneously repealed, which contained similar provisions. This previously existing statute, Pub. L. 85-316, 71 Stat. 640, 8 U.S.C. 1251a (not 1251(a)) was enacted in 1957. Upon its repeal, a portion of it was incorporated into Section 1182 of Title 8 as Section (h). This portion conferred upon the Attorney General the discretionary power to consent to the admission to the United States of certain aliens upon certain conditions, in general, as follows: (1) Aliens with certain close relatives already in the United States (2) whose exclusion would result in extreme hardship to the relatives residing in the United States (3) whose admission to the United States would not be contrary to the national welfare, safety, or security and (4) who were excludable from the United States under paragraphs (9), (10), or (12) of Section

212(a) of the Immigration and Nationality Act (8 U.S.C. 1182). Paragraphs (9), (10), and (12) define three classes of excludable aliens, those who have been convicted of a crime involving moral turpitude, those who have been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more, and those who are concerned with traffic in prostitution. Subsection (i) of Section 212, Immigration and Nationality Act (8 U.S.C. 1182(i)), by its present terms, also grants to the Attorney General certain discretionary powers with reference to the admission of an alien who has close relatives in the United States and who has sought to procure or has procured entry documentation by fraud or misrepresentation.

[fol. 21] Section 7 of the 1957 Act, repealed in 1961 was the near predecessor of the presently existing Section 241(f) (8 U.S.C. 1251(f)). It saved from deportation aliens with close relatives in the United States and who had gained entry because of limited misrepresentations with respect to nationality, place of birth, identity, or residence. The Section, however, expressly conditioned the granting of relief upon the consent of the Attorney General and the fact that the alien's misrepresentations were induced by his fear of persecution because of race, religion, or politics. Its legislative history reveals the congressional intent to apply "fair humanitarian standards." See 1952 U.S.C. Cong. and Adm.News, p. 1753, Besterman, Commentary on the Immigration and Nationality Act, 8 U.S.C.A., page 1. A comparison with the provisions of Section 7 of the 1957 Act with those of the successor Act, Section 241(f), reveals the following: (1) The prescribed United States relatives of the alien are the same, namely, "spouse, parent or a child of a United States citizen or of an alien lawfully admitted for permanent residence". (2) The former Act described misrepresentations as to only four facts to which it was obviously aimed, namely, nationality, place of birth, identity, or residence, whereas, the present Section 241(f) contains no limitation as to the type or nature of the fraud or misrepresentation which the alien may have perpetrated or made. (3) The former Section

conditioned relief upon the discretion of the Attorney General, favorably exercised in favor of the alien, whereas, in the present Section 241(f), there is no provision which conditions its operation upon the exercise of discretionary powers.

The present Section 241(f) is now the last paragraph of the Section which defines classes of deportable aliens and described as the first class, "aliens excludable by the law existing at the time of such entry". Section 241(a)(1), Immigration and Nationality Act (8 U.S.C. 1251). The determination of who are "excludable by the law" requires reference to Section 212, Immigration and Nationality Act (8 U.S.C. 1182). There, many classes are defined as excludable, including those defined in Sections (9), (10), and (12), to which we have already made reference and for whom discretionary relief is expressly made available. In the light of the long course of legislative history indicating a congressional intent to [fol. 22] apply "fair humanitarian standards", it is not reasonable to believe that Congress, by its enactments and reenactments in 1961, intended thereby to deny relief under the repealed Section 7 to an alien who had gained entry by misrepresenting his nationality, place of birth, identity, or residence and at the same time expressly provide for relief to three specific classes of aliens, those convicted of a crime involving moral turpitude, those engaged in the traffic of prostitution, and those who were ex-convicts upon whom at least five years of confinement had been actually imposed. To us, it seems more reasonable that Congress recognized the unyielding nature of the temptation which might impel an alien to make false misrepresentations above and beyond those pertaining to nationality, place of birth, identity, or residence in the hope of residing in proximity to dear ones already resident in the United States. Furthermore, it is entirely reasonable, in view of the broadening liberalization of the terms of the former Section 7 and the elimination of the provision relating to discretion, to assume that the absolute relief conferred by the statute would save from deportation such aliens who procure their documents of entry by fraud, either because their near relatives

already resided in the United States or because, after entry, they were not sought to be deported until after the passage of time and the establishment of intimate familial relationships with citizens of the United States. Perhaps it was sought to encourage responsible officials to scrutinize, with greater care and in advance of entry, representations made by the alien and others in support of immigrant visa applications.

In its brief in our court, and in oral argument, the Immigration Service has taken the position that the petitioner cannot be "otherwise admissible" under the provisions of Section 241(f) and thereby entitled to relief unless at the same time of his admission under the visa obtained by fraud he was also independently admissible under a different status or a different quota. This would lead to the conclusion that Section 241(f) could never be operative unless the alien, while entitled to a visa of unquestionable validity, had nevertheless fraudulently procured another upon which to base his admission. We cannot believe that Congress concerned itself with study and enactment of a statute which would grant relief only to one, if one can be imagined, who would seek to obtain [fol. 23] and would obtain an immigrant visa by recourse to fraud when he already had or would obtain a separate and valid visa and, if the Immigration Service had issued the two documents, would select for presentation and entry the spurious of the two. Such an interpretation of Section 241(f) would, in our judgment, strip it of all substantial meaning and purpose.[1]

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[1] The Board of Immigration Appeals in Matter of Slade, I&N., A-10296218 (Nov. 30, 1962), has disagreed. It points to two hypothetical situations in which it sees that Section 241(f) may operate to the alien's benefit. These are seen in the Board's comments as follows:

> "Does our conclusion make section 241(f) of the Act meaningless as counsel contends? We think not. A person deportable as having obtained a visa by fraud is barred from the United States. In the absence of legislation such as that contained in section 241(f) of the Act there could be no waiver of this perpetual bar to the acquisition of lawful permanent residence in the United States even though ties with United States

The foregoing considerations lead to the conclusion that the petitioner was not, at the time of his entry, inadmissible by reason of falling within one of the excludable classes defined in Section 212 (8 U.S.C. 1182); hence, he [fol. 24] was, except for the fraud for which he is forgiven under the terms of Section 241(f), "otherwise admissible". He does not fall within the excludable class defined in paragraph (20) of Section 212 [2] because of the paragraph's prefatory exception clause. It may be said that our conclusion may encourage aliens to seek entry to our country by fraudulent means and then, with all haste, to establish or create relationships with American citizens. This may well be true, but our only obligation is to reach and apply the most reasonable construction of the

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citizens or legally resident aliens existed. Section 241(f) of the Act is also effective to require termination of deportation proceedings where an alien willfully misrepresented a matter which did not make her inadmissible but which was nevertheless material; i.e., a misrepresentation concerning name, existence of a conviction of a crime which did not involve moral turpitude, etc. (see, *Matter of S— and B—C—*, Int. Dec. 1168)."

In our view, the Board's opinion is fallacious. In the first assumed situation, it overlooked Subsection (i) of Section 212 (8 U.S.C. 1182 (i)), added by amendment on September 26, 1961, which, apart from Section 241(f), grants discretionary power to the Attorney General to waive "this perpetual bar to the acquisition of lawful permanent residence in the United States * * * ". As to the second situation, "termination of deportation proceedings" would be required even though the provisions of Section 241(f) did not exist. See *Duran-Garcia* v. *Neelly*, 246 F.2d 287, 291, (5th Cir. 1957); *Herrera-Roca* v. *Barber*, 150 F. Supp. 492 (N.D. Cal. 1957); *In re Field's Petition*, 159 F.Supp. 144 (S.D.N.Y. 1958). Moreover, it appears quite obvious that the language of Section 241(f) was not drafted for the purpose of requiring the "termination of deportation proceedings" against an alien guilty of a misrepresentation as to "a matter which did not make her inadmissible * * * ".

[2] "Except as otherwise specifically provided in this chapter, any immigraant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 1181(e) of this title;"

statute.[3] In this construction, it is not our duty to weigh all considerations of national policy, humanitarian or otherwise.

The Order of Deportation is vacated.

[fol. 25] CONCURRING OPINION

DUNIWAY, Circuit Judge:

I concur in the foregoing opinion. I would add that the sole ground upon which it is here asserted that section 241(f) does not apply is that Errico was not "otherwise admissible" within the meaning of that subsection, because, but for the misrepresentation, he was not of the proper status under the quota specified in the visa. I note, however, that section 211(a) under which it is sought to deport him, contains five qualifications for admission, which are as follows:

> "(1) . . . a valid unexpired immigrant visa . . .,
> (2) is properly chargeable to the quota specified in the immigrant visa,
> (3) is a non-quota immigrant if specified as such in the immigrant visa,
> (4) is of the proper status under the quota specified in the immigrant visa, and
> (5) is *otherwise admissible* under this chapter." (Emphasis added)

It will be noted that here the phrase "otherwise admissible" refers to matters other than matters of quota status. Section 241(f) is *in pari materia* with section 211(a), and I think it can reasonably be said that the phrase "otherwise admissible" in section 241(f) also refers to disqualifications other than those relating to the

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[3] Even if there is reasonable doubt as to the proper interpretation of Section 241(f), the doubt must be resolved in favor of the alien. *Fong How Tan* v. *Phelan*, 333 U.S. 6, 63 S.Ct. 374, 92 L.Ed 433 (1948); *Barber* v. *Gonzales*, 347 U.S. 637, 74 S.Ct. 822, 98 L.Ed. 1009 (1954); *Garcia-Gonzales* v. *Immigration and Naturalization Service*, —— F.2d —— (9th Cir. 1965).

quota. This construction, as the opinion of my Brother Ely indicates, gives some effect to section 241(f). Otherwise, it appears, as his opinion shows, section 241(f) could hardly ever, and perhaps never, be operative.

[fol. 26]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19,282

GIUSEPPE ERRICO, PETITIONER

vs.

IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT

Upon Petition to Review an order of the Immigration and Naturalization Service.

JUDGMENT—July 9, 1965

This Cause came on to be heard on the Transcript of the Record from the Immigration and Naturalization Service and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the order of the said Immigration and Naturalization Service in this Cause be, and hereby is vacated.

Filed and entered: July 9, 1965.

[fol. 27]

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BEFORE: MERRILL, DUNIWAY AND ELY, Circuit Judges

MINUTE ENTRY OF ORDER DENYING PETITION FOR REHEARING—August 14, 1965

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellee filed August 9, 1965, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[fol. 28]

[Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 29]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1965

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

vs.

GIUSEPPE ERRICO

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—October 31, 1965

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Jan. 11, 1966.

/s/ W. O. Douglas
Associate Justice of the Supreme Court of the United States

[fol. 30]

SUPREME COURT OF THE UNITED STATES

No. 898, October Term, 1965

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

GIUSEPPE ERRICO

ORDER ALLOWING CERTIORARI—March 21, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 215507 767

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 71

MURIEL MAY SCOTT, nee PLUMMER, PETITIONER

vs.

IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 14, 1956
CERTIORARI GRANTED MARCH 11, 1957

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1137

MURIEL MAY SCOTT, nee PLUMMER, PETITIONER

vs.

IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

[fol. A]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

#27826

MURIEL MAY SCOTT, nee PLUMMER, PETITIONER

against

IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT

PETITIONER'S APPENDIX—Filed April 26, 1965

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* * * *

[fol. 1]

BEFORE THE
IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES DEPARTMENT OF JUSTICE

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

File No. A-11 545 622

UNITED STATES OF AMERICA:

In the Matter of

SCOTT, MURIEL MAY nee PLUMMER, Respondent.

ORDER TO SHOW CAUSE AND NOTICE OF HEARING—
January 12, 1962

To: MURIEL MAY SCOTT
(name)
1051 Tiffany Street, Apt. 4-B, Bronx, 59, New York
(address)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Jamaica, the West Indies and a citizen of Great Britain;
3. You last entered the United States at New York, New York on or about August 6, 1958 (date);

Registered and fingerprinted under Immigration and Nationality Act at New York on 1-12-62

See Continuation Sheet attached hereto and made a part hereof.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

See Continuation Sheet attached hereto and made a part hereof.

2/6/62

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at 20 West Broadway, New York City; 14 fl., on January 19, 1962 at 8:45 a.m., and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: January 12, 1962

IMMIGRATION AND NATURALIZATION SERVICE

/s/ Illegible
(signature and title of issuing officer)

Assistant District Director for Investigations
New York, New York
(City and State)

(over)

[fol. 2] CONTINUATION SHEET

A-11 545 622

SCOTT, MURIEL MAY nee PLUMMER

4. You were then admitted for permanent residence with a nonquota immigrant visa issued to you as the wife of a person known as EDWARD LEE SCOTT, a citizen of the United States.
5. You entered into a marriage ceremony with the said EDWARD LEE SCOTT on or about December 24, 1957 with the understanding that it was to be a marriage in name only, solely for the purpose of qualifying for a nonquota immigrant visa.
6. At the time you entered into the marriage ceremony with the said EDWARD LEE SCOTT you had no intention of establishing a bona fide marital relationship with him.
7. You have not established a bona fide marital relationship with the said EDWARD LEE SCOTT.

And on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are not nonquota immigrants as specified in the immigrant visa, under Section 211(a)(3) of the Act.

[fol. 3]

BEFORE THE
IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES DEPARTMENT OF JUSTICE

File A-11 545 622 - New York, N. Y.

IN DEPORTATION PROCEEDINGS

In the Matter of
MURIEL MAY SCOTT nee PLUMMER
Respondent

CHARGE:

I & N Act—Section 241(a)(1), excludable at time of entry—alien not nonquota as specified in visa under Section 211(a)(3) of the Act

APPLICATION: Voluntary Departure

IN BEHALF OF RESPONDENT:

Benjamin Pesikoff, Esq.
3513 Broadway
New York, N. Y.

IN BEHALF OR THE SERVICE:

Clara Binder
Examining Officer
New York, N. Y.

DECISION OF THE SPECIAL INQUIRY OFFICER—
February 28, 1962

The respondent is a 26-year-old female alien, a native of Jamaica, The West Indies, and a citizen of Great

Britain, who last entered the United States at the port of New York, N.Y., on August 6, 1958, at which time she was admitted in possession of a nonquota immigrant visa issued to her on July 24, 1958, as the wife of a citizen of the United States. The immigrant visa in question shows that it was issued as the result of a visa petition approved February 26, 1958, and the visa contains a [fol. 4] marriage certificate showing the marriage on December 24, 1957 between Muriel May Plummer and Edward Lee Scott, in Jamaica.

It is the contention of the Immigration and Naturalization Service that the respondent entered into the marriage ceremony with Edward Lee Scott, December 24, 1957, with the understanding that it was to be a marriage in name only, solely for the purpose of qualifying for a nonquota immigrant visa; and that at the time the respondent entered into such marriage ceremony, she had no intention of establishing a bona fide marital relationship with him, and has not established any such bona fide marital relationship.

The Government's case rests upon two records of sworn statement: one taken on October 19, 1961, and the second on November 8, 1961. In the course of this first record of sworn statement the respondent admitted facts establishing that she is an alien, and that she was married on only one occasion on December 24, 1957 to Edward Lee Scott. The respondent admitted that the wedding had been arranged for her by a man named Dudley Goulbourne, who was actually present at the time the wedding took place in Jamaica, that she never had marital or sexual relations with the man she married, and that following the marriage ceremony on December 24, 1957, she never saw Edward Lee Scott again. She admitted that she had never corresponded with the man Scott before she met him, nor has she corresponded with him at any time after the marriage. She acknowledged that her visa application indicated that she was proceeding to Edward L. Scott, husband, at 1796 St. Johns Place, Brooklyn, New York, but that her husband, Scott, was [fol. 5] not living there at that time, nor to her knowledge has he ever lived at that address. Subsequent to her

arrival in the United States, she went to live with her sister, Gloria, at the address in question and had continued to live there until the respondent moved from that address about a year later. She admitted that she had received a letter from her sister, advising her that a man was coming to Jamaica to go through a marriage ceremony with her, and that she did not know the name of the man who was coming to Jamaica to marry her before he actually arrived in Jamaica. She knew only of the identity of Mr. Goulbourne, the man who was present at her marriage.

In the course of her statement of October 19, 1961, however, the respondent denied any understanding at the time of her marriage that she was not to live with Mr. Scott in a marital relationship, and denied knowing that at the time she went through with the marriage ceremony that it was to be a sham or "paper" marriage only.

The record also contains a record of sworn statement taken on November 8, 1961, at which time both the respondent and her sister, Gloria Slade, were present. In the course of this statement the respondent was first shown a complete transcript of the statement taken from her on October 19, 1961, and she was asked to read it, initial each page, and sign the last page thereof, if it was a true transcript of her testimony. The respondent complied with this request. She was also asked whether every statement given by her on October 19, 1961 was true, and answered that this was so.

[fol. 6] Investigator Samuel Steckler who took the sworn statement of November 8, 1961, as well as the statement of October 19, 1961, then proceeded to question the respondent's sister, Gloria Slade, under oath. Gloria Slade was first asked to examine two prior sworn statements taken from her, one on April 30, 1959, and the other on October 18, 1961. After examining the statements in question, she stated that she had told the truth in each of these prior statements. In particular, she admitted that her previous testimony in those statements to the effect that arrangements were made for the marriage of her sister Muriel, the respondent, by one Dudley Goulbourne for $500. She also confirmed her prior testimony that it

was understood before the marriage that the respondent was not to live with the man she married. She stated also that her sister, the respondent, knew of this understanding and arrangement. She acknowledged that the respondent never lived with the man she married, never had marital relations with him, but from the time of her arrival in the United States has continuously lived with Gloria Slade. The respondent's sister testified that the marriage which was contracted between the respondent and Mr. Scott was solely for the purpose of qualifying the respondent for a nonquota immigrant visa. She stated also that her sister never had any intention of establishing a bona fide marital relationship with Mr. Scott. She admitted placing her own money into a bank account in the Central Savings Bank in a joint account showing the respondent's name and Mr. Scott's name but that none of the money belonged to Mr. Scott and that she removed the money from the bank account in June of 1958. She testified that Edward Lee Scott never lived at 1796 St. [fol. 7] Johns Place. After the respondent's sister had testified in her presence as outlined above, the respondent herself was examined and the following questions and answers are recorded in Exhibit 4 of the record at Page 7:

"Q Isn't it true that at the moment that you married that man, who called himself Edward Lee Scott, that you knew before the marriage that you would never live with him?

A Yes, I knew that I wasn't going to live with him.

Q And when you applied for your immigration visa at the American Consulate at Kingston, Jamaica, isn't it true that you knew at that time that you were not coming to the man you married who called himself Edward Lee Scott?

A Yes.

Q Then are you now changing your statement of October 19, 1961 when you did not admit that?

A Yes, I am changing my statement now. Yes, I knew ahead of time before the marriage that I wasn't supposed to live with him.

Q And isn't it true that you went through that marriage ceremony for only one purpose and reason—to show the Consul that you were married to a United States citizen—to get a permanent visa?
A Yes."

On January 12, 1962, the respondent and her sister both signed a concluding statement reciting as follows:

"I have read the foregoing eight (8) pages of my statement dated November 8, 1961. This is a correct transcript of the testimony that took place on November 8, 1961. The statements I gave are the truth."

It will be noted that although the respondent appears to have been represented by present attorney at the time that each of these statements were taken, and she was specifically asked whether she desired to proceed with [fol. 8] her statement without the presence of her lawyer, she answered that she was willing to go ahead without his presence.

Counsel in his cross-examination of Mr. Steckler attempted to imply that there was some element of duress connected with the taking of these sworn statements. The implication which the respondent's attorney tried to make was that Mr. Stickler was interested in the prosecution of Mr. Goulbourne for his part in this affair and was disturbed by the fact that the respondent has declined to sign a statement of May 14, 1959. Accordingly, Counsel would have me conclude that perhaps Mr. Steckler was over diligent and anxious to have the respondent make a statement implicating Mr. Goulbourne so that she would not refuse to be a witness in his prosecution. However, Counsel himself has conceded that by October 19, 1961, Mr. Goulbourne had already been convicted and sentenced. Obviously then, no such implication can or should be drawn as to the taking of the statement. Mr. Steckler himself has specifically denied threatening the respondent with criminal prosecution for participation in a conspriacy with Mr. Goulbourne and, in fact, if the two statements are examined carefully, it would appear that

Mr. Steckler was almost overly solicitous of the respondent. At page 5 of the statement of October 19, 1961, he confronted the respondent with the fact that she had previously made a statement on May 14, 1959, which apparently she refused to sign upon the advice of counsel, which was directly contradicted by the testimony she was giving on October 19, 1961. Nevertheless, Mr. Steckler accepted the respondent's mere statment that she did not remember the statement of May 14, 1959, and that she was upset and frightened at the time that statement was taken.

[fol. 9] Furthermore, when the statement of November 8, 1961 was taken and the questions and answers quoted above were given, Mr. Steckler did not even point out to the respondent that she had in effect testified falsely in her statement of October 19, 1961, but merely commented that she was now changing her prior statement.

Furthermore, although Counsel has attempted to inject this note of duress into the taking of each of the statements, he has carefully avoided questioning the respondent herself as to the circumstances under which these statements were taken, or as to whether there were any elements of duress or involuntariness in such statements. Moreover, respondent's counsel has not actually placed in issue any of the relevant material contained in the statements. It is true that he made one tentative effort in this direction by asking the respondent whether at the time she married Mr. Scott she knew that she was not going to live with him, and she answered in the negative. However, when the Examining Officer attempted to cross-examine her in this regard, Counsel advised his client not to answer the question on the ground that such answer might tend to degrade or incriminate her. Under the circumstances, the respondent's testimony, being a completely self-serving declaration and in direct contradiction to her recorded testimony which is of record, is not worthy of credence.

I find therefore on the basis of the record before me that the allegations of fact contained in the order to show cause are amply sustained by the evidence of record. It may be noted in passing that even if the element of [fol. 10] fraud were not present, it is likely that the

respondent's marriage to Edward Lee Scott was an invalid one because Mr. Scott had previously entered into at least one such previous marriage which was still in effect. However, this evidence was not formally presented by the Examining Officer and can be gathered only by inference from the statements of record. Accordingly, I will make no finding with regard to the validity of the respondent's marriage which rests on the marital status of her husband at the time of the respondent's marriage to him.

The law is clear that under the circumstances of the respondent's marriage on December 24, 1957, such marriage is completely void. In the case of *United States* v. *Rubenstein*, 151 F. 2d 915 (C.C.A. 2, 1945), Cert. den. 326 U.S. 766, the court was confronted with a situation remarkably similar to the instant one. A marriage had been entered into solely for immigration purposes with no intent of consummation and the wife, who was the beneficiary of the marriage, was to pay the husband $200 and after six months there was to be a divorce and another $200 paid. In discussing the effects of this arrangement, the Court said:

> "But, that aside, Stitz and Sandler were never married at all. Mutual consent is necessary to every contract; and no matter what forms or ceremonies the parties may go through indicating the contrary, they do not contract if they do not in fact assent, which may always be proved. (Citations omitted.) Marriage is no exception to this rule; a marriage in ject is not a marriage at all. This is the law of New Jersey as well as elsewhere. (Citations omitted.) It is quite true that a marriage without subsequent consummation will be valid; but if the spouses agree to a marriage only for the sake of representing it as such to the outside world and with the understanding that they will put an end to it as soon as it has served its purpose to deceive; they have never
> [fol. 11] really agreed to be married at all. They must assent to enter into the relation as it is ordinarily understood, and it is not ordinarily understood as merely a pretense, or cover, to deceive others."

It is clear that at the time the respondent married Edward Lee Scott it was with the understanding that it was to be a marriage in name only and solely to enable to respondent to qualify for a nonquota immigrant visa, and that she had no intention of establishing a bona fide marital relationship with him. The subsequent facts are ample corroboration of the original intent of the respondent, since she never even saw the husband subsequent to the marriage and, of course, never lived with him.

In view of the fact that the respondent was not validly married to a citizen of the United States at the time she obtained her nonquota visa, she was not entitled to the nonquota status which was accorded her and she is accordingly deportable on the charge contained in the order to show cause.

Obviously also, this is a case where is would be completely inappropriate to exercise the discretion presiding in the Attorney General under Section 211(c) of the Immigration and Nationality Act, in view of the deliberate nature of the fraud.

The respondent has applied for the privilege of voluntary departure from the United States in lieu of deportation. She has testified that she has never been arrested or had any trouble with the police, and there is no evidence of record other than the material already discussed [fol. 12] indicating that she has been other than a person of good moral character during the past five years. The respondent, since her arrival in the United States, has had sexual relations with a man other than Mr. Scott, and as a result of such relations, a child was born to her in the City of New York on January 17, 1962. The Government has acknowledged that the respondent and her sister gave full information regarding the operation of the conspiracy which succeeded in bringing the respondent to the United States as a nonquota immigrant, and that although they were not required to testify in the prosecution of the principal conspirator, they were available for such testimony. Probably as a result of his awareness of their readiness, Mr. Goulbourne pleaded guilty and thereby made their testimony unnecessary.

It is true that the respondent within the past five years has admitted perpetrating a fraud upon the Government of the United States for the purpose of obtaining an immigrant visa. It is equally true, however, that the Immigration and Nationality Act in Section 212(h) specifically forgives such fraud and the admission of the commission of perjury in connection with such fraud in the case of a person who is the parent of a United States citizen. The respondent is the parent of a United States citizen, as that term is defined in Section 101 of the Immigration and Nationality Act, and it appears likely that she will be married to the father of her child, also a United States citizen, before her departure from the United States. Similarly, in Section 241(f) a similar consideration is shown to the parent of a United States [fol. 13] citizen child insofar as deportability is concerned where entry into the United States was procured by fraud or misrepresentation. It is true that Section 205(c) of the Immigration and Nationality Act was amended by the Act of September 26, 1961 (75 Stat. 650) to provide that no visa petition shall be approved for an alien who previously has been accorded, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, a nonquota status under Section 101(a)(27)(A) as the spouse of a citizen of the United States.

It is true that in the statement of October 19, 1961, the respondent was somewhat reluctant to admit all of the circumstances of her case. Nevertheless on May 14, 1959, she had given all the facts relating to the conspiracy, but had simply refused to sign the statement on the advice of counsel. When she was asked whether she had made such a statement and the facts contained therein were enumerated to her, she stated that she thought she remembered making such a statement but did not quite remember. Under the circumstances, I do not believe that her testimony on October 19, 1961 constituted false testimony within the meaning of Section 101(f) of the Immigration and Nationality Act. Even if it did, by reason of the short period of time elapsing between October 19, 1961, and by reason of the fact that the respondent testified

truthfully on November 8, 1961, the first occasion apparently upon which she was confronted with her prior testimony in written form, I would be inclined to consider her action on the latter occasion a sufficiently prompt recantation to remove her from the category of one who has given false testimony.

[fol. 14] I have had the opportunity of examining the demeanor and reactions of the respondent during a hearing that lasted more than six hours. The conclusion that I reached from my observation is that the respondent is a nervous, weak individual who is readily moved to any course of action suggested to her by a stronger personality. I believe that the moving spirit in this conspiracy was her sister Gloria, who initiated the entire matter, and who made all the necessary arrangements. Although the respondent is not blameless, I do not believe that she was more than a passive participant in the entitre affair.

Accordingly, I find her to be a person of good moral character, and the requested relief will be granted as a matter of administrative discretion.

he respondent has indicated that if ordered deported she desires to be sent to Jamaica, The West Indies.

ORDER: IT IS ORDERED that in lieu of an order of deportation, the respondent be granted voluntary departure without expense to the Government within such time and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if the respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings, and the following order shall thereupon become immediately effective: The respondent shall be deported from the United States to Jamaica, West Jamaica, West Indies, on the charge contained in the order to show cause.

/s/ Ira Fieldsteel
IRA FIELDSTEEL
Special Inquiry Officer

[fol. 15] BEFORE THE
BOARD OF IMMIGRATION APPEALS
U. S. DEPARTMENT OF JUSTICE

File: A-11545622—New York

In re: MURIEL MAY SCOTT nee PLUMMER

IN DEPORTATION PROCEEDINGS

APPEAL

ORAL ARGUMENT: May 14, 1962

On behalf of respondent:

Benjamin Pesikoff, Esq.
3513 Broadway
New York 31, New York

On behalf of I&N Service:

R. A. Vielhaber, Esq.

CHARGES:

Order: Sec. 241(a)(1), Immigration and Nationality Act [8 USC 1251(a)(1)]—Excludable at entry under 8 USC 1181(a)(3)—Not nonquota immigrant as specified in visa

Lodged: None

APPLICATION: Termination of proceedings

DECISION—August 14, 1962

This case is before us on appeal from a decision of a special inquiry officer granting voluntary departure and directing that the alien be deported if she fails to depart voluntarily.

The respondent is a 26-year-old female, native of the West Indies and British subject, who last entered the United States on August 6, 1958 at which time she was admitted for permanent residence as a nonquota immigrant. She was accorded nonquota status on the basis of

her marriage to a United States citizen on December 24, 1957. The special inquiry officer found that this marriage was completely void, and he concluded that the respondent was deportable on the charge stated above because, at the time of entry, she was a quota immigrant and not a nonquota immigrant as specified in her immigrant visa. The [fol. 16] sole issue to be determined is whether the respondent is deportable on the charge stated above.

We have carefully reviewed the entire record. The respondent was questioned on October 19, 1961 (Ex. 2) and she and her sister, Gloria Slade, were questioned on November 8, 1961 (Ex. 4). Considering these statements and the testimony at the hearing, we find that the facts are as follows. Gloria Slade arranged through one Goldbourne for the marriage of the respondent to a United States citizen and agreed to pay Goldbourne $500. Two hundred dollars was actually paid. Goldbourne took one Lloyd to Jamaica, West Indies, who, using the name Edward Lee Scott, married the respondent the following day. The respondent had not seen him before that and she has not seen him since the marriage. They never had sexual intercourse and it was understood by the parties that the marriage was not to be consummated but was for the sole purpose of enabling the respondent to secure nonquota status.

Counsel states that the respondent is an uneducated domestic. He contends that her statements (Exs. 2 and 4) should not have been received in evidence and claims that she was deprived of a right guaranteed by Section 6(a) of the Administrative Procedure Act [5 USC 1005 (a)] which provides that any person compelled to appear in person before a representative of any agency shall have the right to be accompanied, represented and advised by counsel. Investigator Steckler, before whom the statements were made, was a Government witness at the hearing. A file copy of a letter to the respondent on October 12, 1961, requesting her to appear on October 19, was presented by Mr. Steckler (p. 13) and it shows that a copy was forwarded to counsel. Counsel stated that he did not receive the letter or does not recall receiving it. The statements of October 19 and November 8,

1961 show that on each occasion the respondent stated that she was willing to make the statement without her attorney being present. Under the circumstances, we consider it unnecessary to pass upon the question of whether 5 USC 1005(a) has any applicability to statements which were made prior to the institution of deportation proceedings.

[fol. 17] Counsel also asserts that the statements were made under a promise of immunity but the record contains no evidence whatever to support this assertion. The examining officer asked the respondent whether she was at the New York office on October 19, 1961, but she refused to answer on the advice of counsel and the latter did not question her concerning the circumstances surrounding the making of the statements. At the commencement of each statement, Mr. Steckler had informed the respondent concerning his official position and that any statement was to be made voluntarily and could be used by the Government in any proceeding instituted against her or any other person and she stated that she was willing to make a voluntary statement under these conditions. Mr. Steckler was cross-examined by counsel at length concerning the statement of October 19, 1961 (pp. 13-56), and we are convinced from this record that both statements were made voluntarily and that they were not made under duress or as the result of any promise of immunity. 8 CFR 242.14(c) provides that the special inquiry officer may receive in evidence any relevant oral or written statement previously made by the respondent, and we hold that the respondent's statements of October 19 and November 8, 1961 was properly received in evidence.

Our findings above concerning the facts in this case are based primarily on the respondent's admissions in her two statements (Exs. 2 and 4). At the hearing, counsel did not question the respondent concerning the accuracy or inaccuracy of the statements in Exhibits 2 and 4 except that he did ask her whether at the time of the marriage she felt she was going to live with Scott (Lloyd) as husband and wife. She answered this question affirmatively and also stated that the first time she believed

otherwise was after she came to the United States (p. 89). However, when the examining officer attempted to cross-examine the respondent along this line, she indicated that she did not wish to answer the questions.

The remaining contention of counsel is that the deportation proceeding should be terminated because of the provisions of the "1957 statute" and "241(f)". These references, although inadequate, relate to Section 7 of the [fol. 18] Act of September 11, 1957 [8 USC 1251a] and Section 241(f) of the Immigration and Nationality Act as amended September 26, 1961 [75 Stat. 655; 8 USC 1251(f)]. Section 7 of the Act of September 11, 1957 was repealed by Section 24(a)(3) of the Act of September 26, 1961 [75 Stat. 657], and we will, therefore, consider the respondent's case under 8 USC 1251(f). She claims to be within its purview as the parent of a United States citizen, having testified that a child was born to her in New York City on January 17, 1962 (pp. 83-85). Lloyd (or Scott) is not the father of the child.

In the case of an alien who is the parent of a United States citizen and who was otherwise admissible at the time of entry, 8 USC 1251(f) makes inapplicable the provisions relating to deportation on the ground of excludability for having procured a visa or entry into the United States by fraud or misrepresentation. Counsel asserts that, if this statutory provision was intended to waive only an alien's excludability under 8 USC 1182(a)(19), Congress could have referred specifically to that section instead of employing the language which was used. However, the Service does not contend that 8 USC 1251(f) is limited to aliens who were excludable under 8 USC 1182(a)(19), and we have specifically held that its predecessor (Section 7 of the Act of September 11, 1957) comprehended aliens not precisely within its terms, that is, aliens who were not deportable under 8 USC 1251(a) and aliens who were not excludable at the time of entry. *Matter of S-*, 7 I&N Dec. 715 (1958).

The Service did not charge the respondent with being deportable on the ground that she was excludable at the time of entry under 8 USC 1182(a)(19) and we need not, therefore, determine her deportability on that charge.

If she had been found deportable on that charge, however, she would still not be within the purview of 8 USC 1251(f) unless she was "otherwise admissible at the time of entry" as required by that statutory provision. The respondent was not otherwise admissible at the time of entry because she was actually a quota immigrant and entered as a nonquota immigrant. We previously [fol. 19] held that proceedings could not be terminated pursuant to Section 7 of the Act of September 11, 1957 under such circumstances. *Matter of D'O-*, 8 I&N Dec. 215 (1958).

On page 3 of his brief, counsel stated: "The only thing in the case that makes this alien nonquota and within the scope of Section 211(a)(3) is that by using the fraud, the visa was nullified", and he also said that the respondent was in every sense nonquota but for the fraud. These statements are somewhat ambiguous and we consider it appropriate to clarify the matter. The respondent's immigrant visa (Ex. 3) shows that she claimed to be a nonquota immigrant as the wife of Edward Scott, a United States citizen. If the marriage is disregarded, however, she was a quota immigrant by reason of her birth in the West Indies and the provisions of paragraphs (27)(C) and (32) of 8 USC 1101(a). While counsel apparently contends that the visa was invalid as having been procured by fraud, the Service did not charge the respondent with deportability on that ground but only on the ground that she was excludable under Section 211(a)(3) of the Act [8 USC 1181(a)(3)] because her visa stated that she was a nonquota immigrant whereas she was actually a quota immigrant. In other words, she evaded the quota restrictions by securing entry as a nonquota immigrant. As we stated in *Matter of D'O-*, supra, there is nothing in the history of Section 7 of the Act of September 11, 1957 which would indicate that it was the intention of Congress to remove the careful protection which had been built into the immigration laws regarding quotas.

The special inquiry officer found (decision, p. 9) that the respondent had married Lloyd (or Scott) with the understanding that it was to be a marriage in name

only and solely for the purpose of enabling the respondent to qualify for a nonquota immigrant visa; that she had no intention of establishing a bona fide marital relationship with him; and that she was not entitled to nonquota status because she had not validly married a citizen of the United States. Counsel has not specifically claimed that the marriage was valid and apparently he concedes that, as a result of the marriage, the visa [fol. 20] was obtained by fraud. A case entirely analogous to that of the respondent is *Matter of M-*, 8 I&N Dec. 217 (1958), in which we sustained a deportation charge under Section 241(a)(1) of the Immigration and Nationality Act on the ground that the alien was not a nonquota immigrant as specified in his visa, and we relied on *Lutwak* v. *United States*, 344 U.S. 604 (1953) and *United States* v. *Rubenstein*, 151 F. 2d 915 (2nd Cir. 1945). That case is controlling as to this respondent. Accordingly, her appeal will be dismissed.

ORDER: It is ordered that the appeal be and the same is hereby dismissed.

Chairman

[fol. 21]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

* * * *

PETITION FOR JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY ACTION—Filed October 4, 1962

TO THE HONORABLE THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petition of MURIEL MAY SCOTT respectfully shows to this Court as follows:

1. Petitioner seeks review of an order of the Attorney General, made through his delegatees, declaring that she is unlawfully in the United States and deportable there-

from, and directing that she be deported from the United States if she failed to depart voluntarily within a time set by him.

2. This Court's jurisdiction arises under the provision of 8 U.S.C. Section 1105; and the venue is with this Court because the deportation proceedings were conducted before a special inquiry officer within the Circuit and because petitioner resides within this Circuit.

3. The petitioner is an alien, a native of the West Indies and a British subject, who was admitted to the United States as a lawful permanent resident on August [fol. 22] 6, 1958. Her admission was as a nonquota immigrant, such status having been accorded her on the basis of her marriage to a United States citizen. At a deportation hearing, a special inquiry officer of the respondent found that the marriage was void for immigration purposes because, he found, the marriage was not bona fide but was entered into for the sole purpose of enabling petitioner to qualify for nonquota status. She was, therefore, found to be deportable under 8 U.S.C. Section 1251(a)(1) as a person excludable at the time of here entry, to wit, as a person not a nonquota immigrant as specified in her visa. This marriage has not been disolved. The petitioner is the parent of a United States citizen child who is not, however, a child of that marriage.

Relief is sought on the ground that this decision was erroneous in fact and in law. Specifically, petitioner sets forth the following: (a) the respondent erred in failing to terminate the proceedings and hold the petitioner not to be deportable by virtue of the provisions of 8 U.S.C. Section 1251(f) as amended September 26, 1961. (b) The finding that the marriage was void was based upon records of sworn statements allegedly made by petitioner prior to the hearing, which records were improperly introduced into evidence. They were obtained in violation of petitioner's right to counsel under 5, U.S.C. Section 1005(a); they were obtained under conditions amounting to legal duress; their use at the hearing was in violation of petitioner's rights to due process of law under the Fifth Amendment to the United States Constitution. [fol. 23] (c) The order sought to be reviewed was not

based upon reasonable, substantial and probative evidence as required by 8 U.S.C. Section 1252(a); the said order was also contrary to the weight of the evidence.

4. The order of the special inquiry officer was made February 28, 1962 and is attached hereto as Exhibit "A". The order of the Board of Immigration Appeals dismissing the administrative appeal was made August 4, 1962 and is attached hereto as Exhibit "B"; the order of the Board of Immigration Appeals denying reconsideration made September 12, 1962 and is attached hereto as Exhibit "C". The petitioner has exhausted all administrative avenues of relief.

5. The validity of the order sought to be reviewed has never been adjudicated by this or any other Court or Judge thereof.

BENJAMIN PESIKOFF, ESQ.
Attorney for Petitioner
Office & P.O. Address
3513 Broadway
New York 31, New York

FRIED & MAILMAN, ESQS.
Of Counsel
Office & P.O. Address
295 Madison Avenue
New York 17, New York

By: _____

[fols. 24-44] * * *

[fol. 45]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 502—September Term, 1964.

Argued May 27, 1965

Docket No. 27826

MURIEL MAY SCOTT, *née* PLUMMER, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT

Before:

LUMBARD, *Chief Judge*,

SMITH and KAUFMAN, *Circuit Judges*.

Petition to review an order of the Board of Immigration Appeals finding petitioner deportable as an alien excludable at the time of entry, 8 U.S.C. § 1251(a)(1), 1181, and ineligible for relief from deportation under 8 U.S.C. § 1251(f).

Dismissed.

STANLEY MAILMAN, Fried & Mailman, New York, N.Y. (Benjamin Pesikoff, on the brief), *for petitioner*.

[fol. 46] JAMES G. GREILSHEIMER, Special Assistant United States Attorney, New York, N. Y. (Robert M. Morgenthau, United States Attorney for the Southern District of New York; Francis J. Lyons, special Assistant United States Attorney, on the brief), *for respondent*.

OPINION—July 14, 1965

KAUFMAN, *Circuit Judge:*

Mrs. Muriel May Scott, *née* Plummer, petitions for review of a Board of Immigration Appeals order directing

that she be deported as an alien excludable at the time of entry, 8 U.S.C. § 1251(a)(1), on the ground that she was not a "nonquota immigrant" as specified in her visa, 8 U.S.C. § 1181(a)(3). Although granted voluntary departure as a matter of administrative discretion, Mrs. Scott was deemed ineligible for relief under Section 241(f) of the Immigration Act, 8 U.S.C. § 1251(f), which provides that the statutory provisions relating to deportation of aliens excludable for procuring entry by fraud or misrepresentation do not apply "to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence."

The agency found that the petitioner was not a nonquota immigrant because her pre-entry marriage to an American citizen was void for immigration purposes and that she was ineligible for relief because not "otherwise admissible" under the oversubscribed quota of the country from which she came—Jamaica, British West Indies. Finding no error in the dual determinations of deportability and ineligibility for relief, we dismiss the petition for review.

[fol. 47] On December 24, 1957, in Jamaica, Muriel May Plummer, a native of that colony and a British subject, was formally married to Edward Lee Scott, a citizen of the United States. Since marriage to an American citizen confers nonquota status upon the alien spouse, Section 101(a)(27)(A), 8 U.S.C. § 1101(a)(27)(A), Mrs. Scott applied for and obtained a nonquota immigrant visa, and was later admitted to this country for permanent residence.

Some four years thereafter, in January 1962, the Immigration and Naturalization Service commenced deportation proceedings against Mrs. Scott, serving her with an order to show cause why she was not deportable as an alien excludable at entry because she was not a nonquota immigrant as specified in her visa. The supporting papers alleged that the petitioner had entered into a marriage ceremony with a United States citizen "solely for the purpose of qualifying for a nonquota immigrant visa, . . . without the intention of establishing a bona fide marital

relationship with him," and that such a relationship had not in fact been established.

At a hearing before a Special Inquiry Officer, the following undisputed facts were established on the basis of testimony by Mrs. Scott, her sister Mrs. Gloria Slade, and prior sworn statements by both. Mrs. Slade, who herself had entered the United States through a sham marriage, arranged with one Dudley Goulbourne for Muriel to be married to an American citizen. Goulbourne, who was to be paid $500 for his services,[1] travelled to the British crown colony with Jerome Lloyd, who served as Scott's proxy in the marriage ceremony performed with Muriel [fol. 48] in Kingston, Jamaica, on December 24, 1957.[2] Muriel had neither seen nor communicated with Scott or Lloyd before the ceremony and she concededly saw neither thereafter. Indeed, she did not know the identity of the intended proxy bridegroom until his arrival in Jamaica. Furthermore, it was admitted that Muriel never intended to live with Scott, that the marriage never was consummated, and that Muriel has lived continuously with her sister since arriving in the United States, receiving no support whatever from the man who was her husband in name only. Rather, the sole purpose of the marriage was to qualify Muriel for a nonquota immigrant visa as the spouse of an American citizen.

Based on these concessions, the Special Inquiry Officer found more than ample support in the record for the Service's contention that the marriage—contracted solely for immigration purposes with no intention of establishing a bona fide conjugal relationship—could not confer nonquota status upon Mrs. Scott. The Board of Immigration Appeals sustained the finding that Mrs. Scott was

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[1] Goulbourne, who received only $200 of the promised fee, subsequently pleaded guilty to charges of unlawfully encouraging and inducing the entry into the United States of aliens not lawfully entitled to enter.

[2] Arguably, the Plummer-Scott marriage, with Llyod as proxy, was void from the inception, for at the time of the ceremony Lloyd allegedly was already married. The Service did not, however, introduce direct evidence on this point at the deportation hearing and therefore does not press the matter.

deportable because she was not, as her visa specified, a nonquota immigrant. The Board also rejected the alien's claim that she was entitled to relief under Section 241 (f), which would apply if (1) she was the parent of a United States citizen, (2) her excludability was based on having procured a visa or entry by fraud or misrepresentation, and (3) she was "otherwise admissible" at the time of her entry. The first prerequisite was met by the alien because a child was born to Mrs. Scott, out of [fol. 49] wedlock, in New York City in 1962.[3] But, even if Mrs. Scott had been found deportable for fraud in obtaining entry into this country, rather than for not being a nonquota immigrant as specified, she would be nonetheless *not* "otherwise admissible at the time of entry" "because she was actually a quota immigrant and entered as a nonquota immigrant." And, as the Board's opinion indicated, entry as a quota immigrant from Jamaica was impossible because at the time of Mrs. Scott's entry the British subquota for the crown colony, Section 202(c), 8 U.S.C. § 1152(c), was greatly oversubscribed. The Board therefore ordered Mrs. Scott deported to Jamaica, although it endorsed the Special Inquiry Officer's grant of the privilege of voluntary departure. This petition for review, pursuant to Section 106 of the Immigration Act, 8 U.S.C. (1964 ed.) § 1105a, followed.

I.

Mrs. Scott contends initially that she is not subject to deportation because the Government failed to allege or prove the predicate for a finding of nonquota status—an invalid marriage. She claims, in essence, that because the marriage was not shown to be void under Jamaican law, the place where is was performed, it must be presumed valid. But the critical question, in our view, is not whether the purely ceremonial marriage was void in the abstract; rather, the issue is whether Mrs. Scott was the

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[3] The father of the child is neither Scott nor Lloyd. The natural mother of an illegitimate child qualifies as a parent under the statutory definitions, Section 101(b)(1) and (2), 8 U. S. C. § 1101 (b)(1) and (2).

"spouse" of an American citizen and thus admissible for permanent residence as a nonquota immigrant. We agree with the Board of Immigration Appeals' conclusion that a [fol. 50] marriage contracted solely to circumvent the immigration laws, with no intention that the parties will ever live together, does not suffice to make the alien the "spouse" of a United States citizen.

Petitioner's argument overlooks the lesson taught by the Supreme Court in *Lutwak* v. *United States*, 344 U.S. 604 (1953): When questioned in this context, the marriage relationship must be judged in terms of the immigration statutes rather than the law of the place where the empty ceremony was performed. The *Lutwak* case was concerned with charges of criminal conspiracy to defraud the Government by obtaining the illegal entry of three aliens under the War Brides Act as the spouses of honorably discharged veterans. The Court treated the validity of the marriages under foreign law as immaterial because "the common understanding of a marriage, which Congress must have had in mind when it made provision for 'alien *spouses*' in the War Brides Act, is that the two parties have undertaken to establish a life together and assume certain duties and obligations." 344 U.S. at 611. Certainly Congress did not establish nonquota status "to provide aliens with an easy means of circumventing the quota system by false marriages in which neither of the parties ever intended to enter into the marital relationship." *Ibid.* See also *United States* v. *Rubinstein*, 151 F. 2d 915 (2 Cir.), *cert. denied*, 326 U.S. 766 (1945); *Matter of M—*, 8 I. & N. Dec. 217 (1958).

The same functional approach—a concern with the legal consequences of the marriage for immigration purposes—applies here, *a fortiori*, because we are not concerned with a criminal statute that must be strictly construed. See, e.g., *Yates* v. *United States*, 354 U.S. 298, 303-11 (1957); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) [fol. 51] 76, 95-96 (1820). As we said in *United States* v. *Diogo*, 320 F. 2d 898, 905 (2 Cir. 1963), "Congress may adopt a federal standard of *bona fides* for the limited purpose of denying immigration priorities to persons whose marriages do not meet that standard" as embodied

in the legislative understanding of the term "spouse" in the Immigration Act. Since there is no doubt that Mrs. Scott's sham marriage did not create a bona fide husband-wife relationship, we hold that she was not the "spouse" of an American citizen under the Immigration Act and, therefore, not entitled to nonquota status.

II.

Petitioner contends, alternatively that she is eligible for relief from deportation under Section 241(f), which, as we have indicated, would apply to her as the parent of a United States citizen if (a) she is being deported for having procured her entry into this country by fraud or misrepresentation and (b) she was "otherwise admissible at the time of entry." Technically, of course, Mrs. Scott is being deported simply because she was not a "nonquota immigrant" as specified in her visa. But the Government in effect concedes that she meets the first prerequisite noted above since she was excludable at the time of entry for having procured her visa by fraud or misrepresentation, 8 U.S.C. § 1182(a)(19). Indeed, the Board of Immigration Appeals, in construing the predecessor of Section 241(f)—Section 7 of the Act of September 11, 1957, 71 Stat. 641, 8 U.S.C. (1958 ed.) § 1251a—held that the exculpatory provision comprehends aliens not precisely within its terms, stating that "the section of the law under which the charge [for deportability] is laid is immaterial." *Matter of S—*, 7 I. & N. Dec. 715, 717 (1958).
[fol. 52] The interesting question, therefore, is whether, even if Mrs. Scott had been (or was in effect) found deportable for having procured her visa by fraud or misrepresentation, she was "otherwise admissible at the time of entry." She contends that once the element of fraud is eliminated, no other provision of the Immigration Act makes her inadmissible because the phrase "otherwise admissible at the time of entry" in Section 241(f) refers only to qualitative grounds of inadmissibility, as set forth in Section 211, 8 U.S.C. § 1182 (*e.g.*, aliens who are feeble-minded, drug addicts, or have been convicted of crimes involving moral turpitude), and not to quantitative or documentary standards tied to the quota system. We

do not believe that the distinction we are asked to draw is supported by the statutory language when viewed in its proper context, the legislative history, or administrative and judicial interpretations of the relief provision.

Petitioner perforce concedes that nothing in the language of Section 241(f) indicates that the phrase "otherwise admissible" requires only that the alien should have met the qualitative requirements for entry. Rather, she points to the use of the same phrase in Section 211, 8 U.S.C. § 1181, and argues that we are concerned with a "term of art" referable only to qualitive standards of admissibility and not documentary or quota requirements. As applied to Section 211, which details the visa, passport and other documentary requirements for immigrants as well as applicable quota and nonquota rules, this distinction undoubtedly is sound. Indeed, the Government concedes that the first four subdivisions of Section 211(a) pertain to documentary requirements and that the context requires defining "otherwise admissible" in subdivision (5) as pertaining to quantitative admissibility. This does [fol. 53] not mean, however, that the phrase "otherwise admissible" must of necessity be similarly construed when it arises in a wholly different context in the immigration law, designed to cover different problems. Thus, the same phrase in Section 241(f) encompasses all grounds of inadmissibility other than fraud, including quantitative standards. Any other interpretation is likely to invite frustration and wholesale evasion of the quota system which has been repeatedly endorsed by Congress since its adoption as a fundamental part of our immigration laws in 1921. If "otherwise admissible" is limited to prevent invocation of the relief provision only by the insane, prostitutes, Communist Party members, and other qualitatively proscribed persons, the door will be opened for individuals from countries with low but oversubscribed quotas easily to circumvent and thwart this country's immigration policy. Moreover, if Congress intended to excuse not only fraud but compliance with the quota regime, it could have done so with clarity, as in the War Brides Act, 59 Stat. 659 (1945), 8 U.S.C. (1946 ed.) § 232, where the intention to remove documentary re-

quirements was explicitly expressed in a statute which, like Section 241(f), included an "if otherwise admissible" proviso.

The legislative history, although certainly not determinative, lends support to the Government's interpretation of "otherwise admissible" in Section 241(f). Thus, in opening debate on Section 7 of the 1957 Act, the predecessor of Section 241(f), Senator Eastland assured his colleagues that "the bill does not modify the national origins quota provisions." 103 Cong. Rec. 15487 (Aug. 21, 1957). Similar statements were made in the lower chamber by Congressmen Celler and Chelf. 103 Cong. Rec. [fol. 54] 16300, 16305-06 (Aug. 28, 1957). Moreover, when Section 7 of the 1957 Act was carried forward into the present Section 241(f), in Section 16 of the Act of September 26, 1961, 75 Stat. 655, Congress significantly abandoned a limited exception to the documentary provisions for certain displaced persons and refugees. This deletion of the special benefit provision—originally inserted to protect those aliens who misrepresented their nationality or place of birth because they feared repatriation to Communist-dominated countries (but not those who engaged in misrepresentation to evade the quota restrictions), House Rep. No. 1086, 87th Cong., 1st Sess., p. 37 (1961)—indicates that all aliens who now seek to invoke the fraud-excusing provisions of Section 241(f) must surmount quantitative as well as qualitative hurdles.

It is also significant that little more than a year after the enactment of Section 241(f)'s predecessor, the Board of Immigration Appeals, in *Matter of D'O—*, 8 I. & N. Dec. 215 (1958), interpreted "otherwise admissible" as conditioned upon compliance with the quota requirements. That case involved an Italian citizen who fraudulently obtained a nonquota immigrant visa as a native of Argentina, a nonquota country. 8 U.S.C. § 1101(a)(27)(c). The Board, noting that nothing in the 1957 Act indicated a legislative intention to eliminate the careful protection built into the immigration laws regarding the quota system, held that the relief provision excusing fraud was inapplicable because the alien was not otherwise admissible under the Italian quota. This limited administrative

view of the scope of the ameliorative provision was not questioned when Congress reenacted the section in 1961 (with the further minor limitation noted above), and, in- [fol. 55] deed, the new version was said to codify existing law. House Rep. No. 1086, 87th Cong., Sess., p. 37 (1961).[4]

Finally, the Government's interpretation of "otherwise admissible" to include quantitative as well as qualitative requirements does not deprive Section 241(f) of all practical value, as the petitioner would have us believe. She contends that the section would help no one if it did not also waive some underlying ground of inadmissibility because where there is a material fraud or misrepresentation, there is generally an underlying ground for inadmissibility. But the weakness in this argument is the necessary qualifying word "generally"; the interpretation we endorse permits relief where the alien is excludable for fraud but not for the underlying offense. Thus, in *Matter of Mazar*, 10 I. & N. Dec. — (1962), Section 241(f) served to suspend the deportation of an alien excludable for willfully concealing his Communist Party membership but not otherwise inadmissible because that membership was involuntary under Section 212a(28)(I). Similarly, relief would be available to an alien who concealed a past conviction for a crime not involving moral turpitude, for such a conviction would not make the alien qualitatively inadmissible.

We therefore agree with the Board of Immigration Appeals that Mrs. Scott was not "otherwise admissible at the

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[4] Concededly, most judicial decisions interpreting relief measures similar to Section 241(f) involve situations where the alien was otherwise inadmissible for qualitative reasons. See, e.g., *Langhammer* v. *Hamilton*, 295 F. 2d 642 (5 Cir. 1961) (membership in foreign communist party); *Bonham* v. *Bouiss*, 161 F. 2d 678 (9 Cir. 1947) (racial exclusion and immortality). The Government, however, responding to petitioner's inability to find any judicial decision where the term "otherwise admissible" or any comparable phrase was held to relate to quantitative or documentary standards of admissibility, referred us to *Bufalino* v. *Holland*, 277 F. 2d 270 (3 Cir.), *cert. denied*, 364 U.S. 863 (1960), a case in which, it is now conceded, relief was denied under Section 241(f)'s predecessor because the alien lacked proper documentation.

[fol. 56] time of entry," within the meaning of Section 241(f), because the British subquota for Jamaica was oversubscribed when she obtained her visa and when she entered this country.

Dismissed.

SMITH, *Circuit Judge* (dissenting):

I dissent. While I agree that the purported marriage was invalid for immigration purposes, I think that we should give 241(f) an interpretation in keeping with its humanitarian purpose of ameliorating the harshness of the deportation statutes as applied to the families of citizens. Interpreting "otherwise admissible" as referring to qualitative tests rather than quota numbers would properly carry out the purpose of the Act in cases such as this, and there is no solid evidence that the Congress intended so narrow an application as that adopted, in effect carving out an exception to the relief where the fraud involved non-quota status.

[fol. 57]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

* * * *

Present:

HON. J. EDWARD LUMBARD, *Chief Judge*,
HON. J. JOSEPH SMITH,
HON. IRVING R. KAUFMAN,
Circuit Judges.

MURIEL MAY SCOTT, nee PLUMMER, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE,
RESPONDENT

JUDGMENT—July 14, 1965

A petition for review of an order of the Board of Immigration Appeals,

This cause came on to be heard on the Administrative Record of the Immigration and Naturalization Service and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the petition be and it hereby is dismissed.

A. DANIEL FUSARO
Clerk

[fol. 58] [File Endorsement Omitted]

[fol. 59]

[Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 60]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1965

MURIEL MAY SCOTT, ETC., PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERITORIARI—October 13, 1965

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 11th, 1965.

/s/ John M. Harlan
Associate Justice of the Supreme
Court of the United States

Dated this 13th day of October, 1965.

[fol. 61]

SUPREME COURT OF THE UNITED STATES

No. 1007 Misc., October Term, 1965

MURIEL MAY SCOTT, nee PLUMMER, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1137, placed on the summary calendar, and set for oral argument immediately following No. 898.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

March 21, 1966

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. —

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER

v.

GIUSEPPE ERRICO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on July 9, 1965.

OPINIONS BELOW

The majority and concurring opinions in the court of appeals (Appendix, *infra*, pp. 11–22) are reported at 349 F. 2d 541.

JURISDICTION

The judgment of the court of appeals (Appendix, *infra*, p. 23) was entered on July 9, 1965. A petition for rehearing was denied on August 14, 1965. On October 31, 1965, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to

and including January 11, 1966. This Court has jurisdiction under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Under the Immigration and Nationality Act, aliens who procure entry by fraud or misrepresentation are deportable. Section 241(f) of the Act, however, makes an exception to this rule in the case of an alien "*otherwise admissible at the time of entry* who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence." [Emphasis added.] Respondent obtained a first preference visa by fraud. The question presented is whether he is within the protection of Section 241(f) even though he could not have been lawfully admitted because at the time of his entry the quota of his country of origin was substantially oversubscribed.

STATUTE INVOLVED

Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f), provides:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

STATEMENT

Respondent is a thirty-year-old married alien, a native and citizen of Italy, who entered the United States on October 17, 1959, under the first preference of the Italian immigration quota as a specialized mechanic and motor tune-up man on motors produced in Italy (R. 13).[1] His right to admission at the time he entered the United States depended upon his qualification for preference quota status under Section 203(a)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(a)(1)(A), as a quota immigrant—

> whose services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrant and to be substantially beneficial prospectively to the national economy, cultural interests, or welfare of the United States * * *.

On September 27, 1963, respondent was ordered to show cause why he should not be deported on the ground that he was excludable at entry[2] (R. 115). The Special Inquiry Officer, after a hearing, determined that respondent had not, in fact, been a specialized mechanic at the time of entry, and therefore had not been entitled to a first preference quota. Respondent's contention that he was entitled to relief

[1] Respondent's wife came to this country with him. His parents and all of his brothers and sisters reside here and one sister is a citizen of the United States by naturalization. A son was born to respondent and his wife in this country on August 3, 1960 (R. 15–16).

[2] See 8 U.S.C. 1181(a)(4); 8 U.S.C. 1251(a)(1).

from the normal consequences of his misrepresentation by virtue of Section 241(f) was rejected on the ground that he was not otherwise admissible at the time of entry. The Board of Immigration Appeals affirmed the decision of the Special Inquiry Officer and ordered respondent deported, holding that his failure to qualify for waiver under Section 211(c)[3] barred any relief and that it was unnecessary to consider his eligibility under Section 241(f).

The court of appeals vacated the order of deportation on the ground that Section 241(f) was applicable irrespective of respondent's failure to qualify for waiver under Section 211(c). After rejecting the government's argument that respondent was required to obtain a waiver of documentation (obtainable at the discretion of the Attorney General under limited circumstances) in order to have his application considered under Section 241(f), the court held that to be "otherwise admissible" under Section 241(f) an alien did not have to show that he would be "quantitatively" admissible—*i.e.*, that at the time of entry there was a visa available under the applicable quota under which he could have been admitted.

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[3] Respondent had applied for relief under Section 211(c) of the Act, 8 U.S.C. 1181(c), as well as Section 241(f). Section 211(c) is a discretionary-relief provision which authorizes the Attorney General to waive excludability if he is satisfied that the circumstance which made the alien excludable was not known, and could not have been ascertained by the exercise of reasonable diligence, by the alien prior to his departure from the last port outside the United States. The Special Inquiry Officer found that respondent did not qualify for this relief.

REASONS FOR GRANTING THE WRIT

The decision below holds that "otherwise admissible at the time of entry" in Section 241(f) does not require that the alien must have been a person who, under the applicable quota and preference provisions, could then have obtained a visa. It is thus directly in conflict with the decision of the Court of Appeals for the Second Circuit in *Scott* v. *Immigration and Naturalization Service*, 350 F. 2d 279, now pending on petition.[4] *Scott* held that to qualify for relief under Section 241(f) an alien must meet all of the conditions of admissibility specified in the Immigration Act, including those imposed by the Act's quota and preference provisions. The resolution of this conflict, which vitally affects many aliens, is of substantial importance to the uniform administration of the immigration laws.[5] We also believe that the decision below is erroneous.

1. A material misrepresentation in obtaining an immigrant visa is ground for permanent exclusion

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[4] No. 1007 Misc., this Term. The government in its response to the petition in *Scott* is advising the Court that it supports the granting of the writ.

[5] The problem will continue to exist under the recently enacted revision of the immigration laws, Public Law 89-236, 79 Stat. 911, approved October 3, 1965, since the new law, albeit in different form, continues to impose numerical limitations and contains a preference system. Under the new Act, Errico might be eligible for a fifth preference visa since he has a sister who is a citizen of the United States by naturalization. See Section 203(a)(5) of the amended Act. However, we are advised that as a fifth preference immigrant Errico would have a considerable waiting period under the new Act, since the Italian quota for such immigrants remains substantially oversubscribed.

(and hence deportation). See 8 U.S.C. 1182(a)(19); 8 U.S.C. 1251(a)(1); *Duran-Garcia* v. *Neelly*, 246 F. 2d 287, 291 (C.A. 5); Gordon and Rosenfield, *Immigration Law and Procedure* (1965), § 4.7c; Auerbach, *Immigration Laws of the United States* (2d ed., 1961), pp. 302–305. The rule is a rigorous one, as an example will illustrate. Suppose a prospective immigrant, at the time of applying for a visa, represents that he has special qualifications entitling him to a high preference in his country's quota. The representation is false when made, but the applicant sincerely intends to, and does, qualify by the time he actually enters the United States. But for the earlier misrepresentation, he would be admissible at the time of entry. Yet he is excludable—and hence deportable—for having made the misrepresentation.

Section 241(f) is intended to provide relief against such results in the case of aliens having certain family ties in the United States. But the relief is of a circumscribed character. The statute is expressly limited to cases where the misrepresentation was relatively minor since the alien was otherwise admissible, and affords no basis for the view that an alien may qualify for relief under it without meeting all of the conditions of admissibility.* Such a construction would invite circumvention of the quota and prefer-

*When Congress has wanted to exclude quota requirements from the term "otherwise admissible" elsewhere in the immigration laws, it has taken pains to make its intention clear, either by context (as in Section 211, 8 U.S.C. 1181) or expressly (as in the War Brides Act, 59 Stat. 659, 8 U.S.C. 232 (1946 ed.)).

ence provisions of the immigration laws. By misrepresenting that he was a qualified mechanic, respondent displaced someone whose admission to the United States under an honest application would have furthered the statutory policy of encouraging the immigration of persons having special skills, training, or ability. Such a result could not have been intended by Congress in enacting Section 241(f). This is especially clear since equivalent language appears in Section 212(h) (codified as 8 U.S.C. 1182(i)) providing discretionary relief against exclusion. In granting limited relief from the misrepresentation provisions of the immigration laws, Congress surely did not intend that an alien who misrepresented his preference status, and was in fact not entitled to admission under the applicable quota and preference provisions, might demand to be admitted by virtue of Section 241(f); that would open a gaping hole in the statutory scheme of immigration.

Nevertheless, the court of appeals held that respondent was not required to comply with the quota and preference requirements for admission. It appears to have based this result solely[1] on a mistaken belief that the government's reading of "otherwise admissible" in Section 241(f) deprived the statute of any meaning. In fact, misrepresentations are frequently made by visa applicants who, at the time of entry, are fully admissible; and it is this substantial

[1] The court of appeals did cite some legislative history (see 349 F. 2d at 544–545), but only in connection with the government's argument (which we do not press in this Court) that respondent's failure to obtain a waiver of documentation barred him from all relief.

class of immigrants that the statute is designed to benefit. As our earlier example suggested, a representation that was false at the time of application may be true by the time of entry. Moreover, many facts which must be disclosed in the application form, while material to the decision of the immigration authorities whether to grant a visa, do not go to admissibility as such—for example, commission of a crime not involving moral turpitude. Finally, an applicant may misrepresent facts which, while not in themselves very significant, would, if truthfully disclosed, lead the immigration authorities to make further inquiries; such misrepresentations, too, permanently bar the alien from admission to the United States. *Duran-Garcia, supra.* The plain intent of Section 241(f) was to forgive such relatively innocuous, and not infrequent, misrepresentations—not to waive any of the statutory standards of admissibility.

2. The legislative history offers strong support for our reading of Section 241(f). The provision originated in Section 7 of the Act of September 11, 1957, Public Law 85-316, 71 Stat. 640, which set forth a series of exceptions to the rule that fraud or misrepresentation in seeking entry is an independent ground for permanently excluding an alien from the United States. One exception was for an applicant who had misrepresented his nationality because of fear of persecution if repatriated to his former home; but it was carefully provided that such misrepresentation shall not have been made "for the purpose of evading the

quota restrictions of the immigration laws." Congress was thus determined not to forgive misrepresentations intended—as in the present case—to evade the numerical limitations on immigration imposed by the Immigration Act. See H. Rep. No. 1199, 85th Cong., 1st Sess., p. 9. Indeed, in the course of debate on the 1957 Act, specific assurances were given that "the bill does not modify the national origins quota provisions." 103 Cong. Rec. 15487, 16300, 16305–16306. And with specific relation to the category of aliens covered by the present Section 241(f), it was stated (H. Rep. No. 1199, *supra*, at p. 11):

> In respect to expulsion of aliens who are the spouses, parents, or children of United States citizens or lawfully resident aliens, and who are already in the United States, misrepresentation in obtaining documentation or entry would not be ground for deportation if the aliens were otherwise admissible at the time of entry under the immigration law. The latter category of aliens includes mostly Mexican nationals, who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States, establish a family in this country, and were subsequently found to reside in the United States illegally.

Mexico, of course, is a nonquota country. Nothing in the legislative history of Section 241(f) indicates that Congress intended to dispense with quota restrictions in the application of the provision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
PAUL C. SUMMITT,
Attorneys.

JANUARY 1966.

APPENDIX

United States Court of Appeals for the Ninth Circuit

No. 19282

GIUSEPPE ERRICO, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT

July 9, 1965

Before MERRILL, DUNIWAY, and ELY, *Circuit Judges*

ELY, *Circuit Judge:*

Petitioner, now thirty-one years of age, emigrated from his native Italy and, with his wife, gained admission to the United States on October 17, 1959. His parents and all of his brothers and sisters reside in this country, and his son, an American citizen, was born here on August 3, 1960. He was admitted as a selected immigrant under the first preference of the Italian immigration quota. The status was approved under the authority of Section 203(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1153 (a)(1)(A)). The visa petition had been submitted by a motor company of Portland, Oregon, and was supported by representations, in the form of affidavits

originating in Italy, that the petitioner was a specialized mechanic and motor tune-up man on motors of Italian manufacture. Eight days after his arrival in New York City, the petitioner commenced his employment with the Portland motor company. The record reveals that he was given the assignment of performing work on German motors with tools which were strange to him. He remained in this employment for only three months, having failed, according to a finding of the Special Inquiry Officer, "to measure up to the requirements of a specialized mechanic." On August 29, 1960, he entered the employ of Victory Plating Works, Inc., of Portland, and he has remained continuously in such employment.

On September 11, 1963, the Immigration and Naturalization Service issued an Order to Show Cause and Notice of Hearing In Deportation Proceedings in which it was alleged that petitioner was "not a specialized mechanic and tune-up man as alleged. And on the basis of the foregoing * * *, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

> Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are not of the proper status under the quota specified in the immigrant visa, under Section 211(a)(4) of the Act."

A hearing followed, and while it was shown that before he left Italy, and in anticipation of his prospective employment in the United States, the petitioner worked for a few months as an unpaid apprentice in an Italian garage, there was ample evidence to support a finding by the Special Inquiry Officer that the petitioner, at the time of his entry into the

United States, was not a qualified automobile mechanic or a specialist in motors of Italian manufacture.

The petitioner sought relief from deportation under the provisions of Section 211(c) and (d) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1181(c)(d)), which provide, in effect, that the Attorney General may, in his discretion, grant relief to an inadmissible alien "if satisfied that such inadmissibility was not known and could not have been ascertained by the exercise of reasonable diligence by such immigrant" prior to his entry to the United States. The petitioner's application for this relief was denied upon the ground that the petitioner knew of his lack of qualifications prior to his departure from Italy and consequently could not qualify for favorable discretionary action under the provisions of Section 211(c). It is our opinion that the Special Inquiry Officer properly applied Section 211(c) and that the denial of relief under this Section, affirmed by the Board of Immigration Appeals, was correct.

In all stages of the proceedings, the petitioner has insisted that he is saved from deportation by Section 241(f), Immigration and Nationality Act (8 U.S.C. 1251(f)), which provides:

> "The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens *who have sought to procure, or have procured visa or other documentation, or entry into the United States by fraud or misrepresentation* shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence." [Emphasis added.]

It is important to note that the italicized language has been adopted from Section 212(a)(19) (8 U.S.C. 1182(a)(19)), one of many sections designating classes of aliens who "shall be ineligible to receive visas and shall be excluded from admission into the United States:". We have seen that the petitioner is a parent of a United States citizen and the child of aliens lawfully admitted for permanent residence. It is also established that the petitioner procured "visas or other documentation, or entry into the United States by fraud or misrepresentation." Against the petitioner, it has been contended that in the Order to Show Cause, he was not charged with being inadmissible because of the provisions of Section 211(a)(19) relating to aliens who have gained entry by fraud or misrepresentation, but with inadmissibility under the provisions of Section 211(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1181(a)(4)) which reads:

> "(a) No immigrant shall be admitted into the United States unless at the time of application for admission he * * * (4) is of the proper status under the quota specified in the immigrant visa, * * *".

This contention, carefully considered by the Special Inquiry Officer, was correctly treated in his decision as follows:

> "The respondent has established the necessary relationship to come within the provisions of Section 241(f). Several questions, however, remain. The first, whether the provisions of Section 241(f) would apply to his case because he is charged with inadmissibility under the provisions of Section 211(a)(4) of the Immigration and Nationality Act relating to aliens who at entry were not of the proper status specified in the immigrant visa, rather than under Section 212(a)(19), aliens

> who procured a visa by fraud or willfully misrepresenting a material fact. The Board of Immigration Appeals, in the *Matter of K—*, I & N Dec. 585, 589, March 9, 1962, reaffirmed the previous order in *Matter of S-*, 7 I & N Dec. 715, holding that the section of law under which the deportation charge is laid is immaterial. The Board, in *Matter of K—*, stated: 'There are, however, other provisions of Section 241(a) which render an alien deportable after entry on charges which flow directly from the entry by fraud or misrepresentation. The two charges set forth in Section 241(a)(2) come within this category. Since Section 241(f) described in *general terms* aliens whose documentation or entry was procured by fraud or misrepresentation, we are of the opinion that it was the intent of Congress to save from deportation those aliens who were admissible except for the fact that they had made fradulent statements regardless of the provision of the statute under which their deportation is sought.'
>
> It is concluded that the fact that the charge, excludable at entry for fraud or misrepresentation, is not urged, would not disqualify the respondent from the benefits of Section 241(f)."

It would therefore appear that petitioner, as an alien who "procured a visa or other documentation or entry into the United States by fraud or misrepresentation" and "who is the * * * parents, or child of a United States citizen or of an alien lawfully admitted for permanent residence", is saved from the deportation by the provisions of Section 241(f) (8 U.S.C. 1251 (f)) if he was "otherwise admissible" at the time of his entry. The Special Inquiry Officer concluded that since this issue of statutory construction "presents a novel question not decided by the Board", it would be "certified to the Board of Immigration Appeals for review and final decision". The Board held that

since the petitioner's application for discretionary relief by waiver under Section 211(c) was not granted, he could not be "otherwise admissible at the time of entry" and that "Section 241(f) of the Immigration and Nationality Act has no applicability to this case and need not have been discussed".

We disagree with the Board. Fair interpretation of the legislative history of the Section, its terms, and its relation to other statutes *in pari materia* lead to the conclusion that it is operative to spare the petitioner from deportation. Under its plain terms, the Section purports to grant absolute relief to aliens who have close familial ties in the United States and who have gained entry into the United States through "fraud or misrepresentation". Its benefits are not made dependent upon the exercise of discretion by the Attorney General in the granting of a waiver or in any other manner. It was enacted on September 26, 1961 and modified the terms of a portion of a statute, simultaneously repealed, which contained similar provisions. This previously existing statute, Pub. L. 85–316, 71 Stat. 640, 8 U.S.C. 1251a (not 1251(a)) was enacted in 1957. Upon its repeal, a portion of it was incorporated into Section 1182 of Title 8 as Section (h). This portion conferred upon the Attorney General the discretionary power to consent to the admission to the United States of certain aliens upon certain conditions, in general, as follows: (1) Aliens with certain close relatives already in the United States (2) whose exclusion would result in extreme hardship to the relatives residing in the United States (3) whose admission to the United States would not be contrary to the national welfare, safety, or security and (4) who were excludable from the United States under paragraphs (9), (10), or (12) of Section 212(a) of the Immigration and Na-

tionality Act (8 U.S.C. 1182). Paragraphs (9), (10), and (12) define three classes of excludable aliens, those who have been convicted of a crime involving moral turpitude, those who have been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more, and those who are concerned with traffic in prostitution. Subsection (i) of Section 212, Immigration and Nationality Act (8 U.S.C. 1182(i)), by its present terms, also grants to the Attorney General certain discretionary powers with reference to the admission of an alien who has close relatives in the United States and who has sought to procure or has procured entry documentation by fraud or misrepresentation.

Section 7 of the 1957 Act, repealed in 1961 was the near predecessor of the presently existing Section 241(f) (8 U.S.C. 1251(f)). It saved from deportation aliens with close relatives in the United States and who had gained entry because of limited misrepresentations with respect to nationality, place of birth, identity, or residence. The Section, however, expressly conditioned the granting of relief upon the consent of the Attorney General and the fact that the alien's misrepresentations were induced by his fear of persecution because of race, religion, or politics. Its legislative history reveals the congressional intent to apply "fair humanitarian standards." See 1952 U.S.C. Cong. and Adm. News, p. 1753, Besterman, Commentary on the Immigration and Nationality Act, 8 U.S.C.A., page 1. A comparison with the provisions of Section 7 of the 1957 Act with those of the successor Act, Section 241(f), reveals the following: (1) The prescribed United States relatives of the alien are the same, namely, "spouse, parent or a child of a United States citizen or of an alien law-

fully admitted for permanent residence". (2) The former Act described misrepresentations as to only four facts to which it was obviously aimed, namely, nationality, place of birth, identity, or residence, whereas, the present Section 241(f) contains no limitation as to the type or nature of the fraud or misrepresentation which the alien may have perpetrated or made. (3) The former Section conditioned relief upon the discretion of the Attorney General, favorably exercised in favor of the alien, whereas, in the present Section 241(f), there is no provision which conditions its operation upon the exercise of discretionary powers.

The present Section 241(f) is now the last paragraph of the Section which defines classes of deportable aliens and described as the first class, "aliens excludable by the law existing at the time of such entry". Section 241(a)(1), Immigration and Nationality Act (8 U.S.C. 1251). The determination of who are "excludable by the law" requires reference to Section 212, Immigration and Nationality Act (8 U.S.C. 1182). There, many classes are defined as excludable, including those defined in Sections (9), (10), and (12), to which we have already made reference and for whom discretionary relief is expressly made available. In the light of the long course of legislative history indicating a congressional intent to apply "fair humanitarian standards", it is not reasonable to believe that Congress, by its enactments and reenactments in 1961, intended thereby to deny relief under the repealed Section 7 to an alien who had gained entry by misrepresenting his nationality, place of birth, identity, or residence and at the same time expressly provide for relief to three specific classes of aliens, those convicted of a crime involving moral turpitude, those engaged in the traffic of prostitution,

and those who were ex-convicts upon whom at least five years of confinement had been actually imposed. To us, it seems more reasonable that Congress recognized the unyielding nature of the temptation which might impel an alien to make false misrepresentations above and beyond those pertaining to nationality, place of birth, identity, or residence in the hope of residing in proximity to dear ones already resident in the United States. Furthermore, it is entirely reasonable, in view of the broadening liberalization of the terms of the former Section 7 and the elimination of the provision relating to discretion, to assume that the absolute relief conferred by the statute would save from deportation such aliens who procure their documents of entry by fraud, either because their near relatives already resided in the United States or because, after entry, they were not sought to be deported until after the passage of time and the establishment of intimate familial relationships with citizens of the United States. Perhaps it was sought to encourage responsible officials to scrutinize, with greater care and in advance of entry, representations made by the alien and others in support of immigrant visa applications.

In its brief in our court, and in oral argument, the Immigration Service has taken the position that the petitioner cannot be "otherwise admissible" under the provisions of Section 241(f) and thereby entitled to relief unless at the same time of his admission under the visa obtained by fraud he was also independently admissible under a different status or a different quota. This would lead to the conclusion that Section 241(f) could never be operative unless the alien, while entitled to a visa of unquestionable validity, had nevertheless fraudulently procured another upon which to base his admission. We cannot believe that Congress

concerned itself with study and enactment of a statute which would grant relief only to one, if one can be imagined, who would seek to obtain and would obtain an immigrant visa by recourse to fraud when he already had or would obtain a separate and valid visa and, if the Immigration Service had issued the two documents, would select for presentation and entry the spurious of the two. Such an interpretation of Section 241(f) would, in our judgment, strip it of all substantial meaning and purpose.[1]

---

[1] The Board of Immigration Appeals in Matter of Slade, I&N., A-10296218 (Nov. 30, 1962), has disagreed. It points to two hypothetical situations in which it sees that Section 241(f) may operate to the alien's benefit. These are seen in the Board's comments as follows:

> "Does our conclusion make section 241(f) of the Act meaningless as counsel contends? We think not. A person deportable as having obtained a visa by fraud is barred from the United States. In the absence of legislation such as that contained in section 241(f) of the Act there could be no waiver of this perpetual bar to the acquisition of lawful permanent residence in the United States even though ties with United States citizens or legally resident aliens existed. Section 241(f) of the Act is also effective to require termination of deportation proceedings where an alien willfully misrepresented a matter which did not make her inadmissible but which was nevertheless material; i.e., a misrepresentation concerning name, existence of a conviction of a crime which did not involve moral turpitude, etc. (see, *Matter of S— and B—C—*, Int. Dec. 1168)."

In our view, the Board's opinion is fallacious. In the first assumed situation, it overlooked Subsection (i) of Section 212 (8 U.S.C. 1182(i)), added by amendment on September 26, 1961, which, apart from Section 241(f), grants discretionary power to the Attorney General to waive "this perpetual bar to the acquisition of lawful permanent residence in the United States * * *". As to the second situation, "termination of deportation proceedings" would be required even though the provisions of

The foregoing considerations lead to the conclusion that the petitioner was not, at the time of his entry, inadmissible by reason of falling within one of the excludable classes defined in Section 212 (8 U.S.C. 1182); hence, he was, except for the fraud for which he is forgiven under the terms of Section 241(f), "otherwise admissible". He does not fall within the excludable class defined in paragraph (20) of Section 212 [2] because of the paragraph's prefatory exception clause. It may be said that our conclusion may encourage aliens to seek entry to our country by fraudulent means and then, with all haste, to establish or create relationships with American citizens. This may well be true, but our only obligation is to reach and apply the most reasonable construction of the statute.[3]

Section 241(f) did not exist. See *Duran-Garcia* v. *Neelly*, 246 F. 2d 287, 291, (5th Cir. 1957); *Herrera-Roca* v. *Barber*, 150 F. Supp. 492 (N.D. Cal. 1957); *In re Field's Petition*, 159 F. Supp. 144 (S.D. N.Y. 1958). Moreover, it appears quite obvious that the language of Section 241(f) was not drafted for the purpose of requiring the "termination of deportation proceedings" against an alien guilty of a misrepresentation as to "a matter which did not make her inadmissible * * *".

[2] "Except as otherwise specifically provided in this chapter, any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 1181(e) of this title;"

[3] Even if there is reasonable doubt as to the proper interpretation of Section 241(f), the doubt must be resolved in favor of the alien. *Fong Hoo Tan* v. *Phelan*, 333 U.S. 6, 63 S. Ct. 374, 92 L. Ed. 433 (1948); *Barber* v. *Gonzales*, 347 U.S. 637, 74 S. Ct. 822, 98 L. Ed. 1009 (1954); *Garcia-Gonzales* v. *Immigration and Naturalization Service*, —— F. 2d —— (9th Cir. 1965).

In this construction, it is not our duty to weigh all considerations of national policy, humanitarian or otherwise.

The Order of Deportation is vacated.

CONCURRING OPINION

DUNIWAY, *Circuit Judge:*

I concur in the foregoing opinion. I would add that the sole ground upon which it is here asserted that section 241(f) does not apply is that Errico was not "otherwise admissible" within the meaning of that subsection, because, but for the misrepresentation, he was not of the proper status under the quota specified in the visa. I note, however, that section 211(a) under which it is sought to deport him, contains five qualifications for admission, which are as follows:

> "(1) * * * a valid unexpired immigrant visa * * *,
>
> (2) is properly chargeable to the quota specified in the immigrant visa,
>
> (3) is a non-quota immigrant if specified as such in the immigrant visa,
>
> (4) is of the proper status under the quota specified in the immigrant visa, and
>
> (5) is *otherwise admissible* under this chapter." [Emphasis added.]

It will be noted that here the phrase "otherwise admissible" refers to matters other than matters of quota status. Section 241(f) is *in pari materia* with section 211(a), and I think it can reasonably be said that the phrase "otherwise admissible" in section 241(f) also refers to disqualifications other than those relating to the quota. This construction, as the opinion of my Brother Ely indicates, gives some effect to section 241(f). Otherwise, it appears, as his opinion shows, section 241(f) could hardly ever, and perhaps never, be operative.

United States Court of Appeals for the Ninth Circuit

No. 19282

JUDGMENT

GIUSEPPE ERRICO, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT

Upon Petition to Review an order of the Immigration and Naturalization Service.

This cause came on to be heard on the Transcript of the Record from the Immigration and Naturalization Service and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the order of the said Immigration and Naturalization Service in this Cause be, and hereby is vacated.

Filed and entered: July 9, 1965.

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No. ~~1007 Misc.~~

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

MURIEL MAY SCOTT, née PLUMMER, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

THURGOOD MARSHAL,
Solicitor General,

Department of Justice,
Washington, D. C. 20530.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 1007 Misc.

MURIEL MAY SCOTT, nee' PLUMMER, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The sole question presented by the petition is whether petitioner is eligible for relief from deportation under Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f). As the parent of a United States citizen and a person ordered deported for having procured her entry into this country by fraud or misrepresentation, [1] she would be entitled to relief under Section 241(f) if she was "otherwise admissible at the time of entry." The court below held, however, that she was not "otherwise admissible" because the quota of the country from which she came--Jamaica, British West Indies--was oversubscribed (350 F. 2d 279; Pet. App. A). It reasoned that to be "otherwise admissible" an alien must have been not only qualitatively, but also quantitatively, admissible--i.e., that there must have been a visa available to her

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1/ Technically, she was deported under Section 241(a)(1), 8 U.S.C. 1251(a)(1), as excludable by the law existing at the time of her entry because she was not a "nonquota" immigrant as specified in her visa--a defect requiring exclusion at the time of entry under Section 211(a)(3), 8 U.S.C. 1181(a)(3). Pet. App. C. Petitioner, however, procured her nonquota visa by fraudulent representations as to her marriage to a citizen of the United States, and was excludable at the time of entry on this ground. Section 212(a)(19), 8 U.S.C. 1182(a)(19). Under these circumstances, deportation on the ground stated would be, in effect, deportation for having procured entry by fraud or misrepresentation. We therefore concede that she would be entitled to relief under 241(f) if she was "otherwise admissible" at the time of entry.

under the applicable quota at the time of entry.

The instant decision is directly in conflict with a recent decision of the Ninth Circuit, holding that an alien admitted to this country on a fraudulently obtained first preference visa was "otherwise admissible at the time of entry" even though at the time of entry the quota for the country from which he came (Italy) was substantially oversubscribed. Errico v. Immigration and Naturalization Service, 349 F. 2d 541 (C.A. 9). The government is contemporaneously filing a petition for a writ of certiorari in Errico. As we explain in that petition, it is important that this conflict as to the scope of the term "otherwise admissible" in Section 241(f) be resolved by this Court. As we also point out, the problem is a continuing one, in view of the preference system and numerical limitations in the recently enacted immigration legislation, Public Law 89-236, 79 Stat. 911, approved October 3, 1965. The "otherwise admissible" language here at issue remains in effect, and there will continue to be a number of aliens seeking relief under Section 241(f) who could not qualify under the decision of the court below because they are not "quantitatively" eligible for a visa at the time of entry.

Accordingly, we believe that the petition for certiorari herein should be granted, together with the government's petition in Errico, and that the two cases should be heard together.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JANUARY 1966.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 54

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioner,

v.

GIUSEPPE ERRICO,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EDWIN J. PETERSON
801 Standard Plaza
Portland, Oregon
Counsel for Respondent
FRANK IERULLI
Commonwealth Building
Portland, Oregon
GERALD H. ROBINSON
810 Standard Plaza
Portland, Oregon
Of Counsel for Respondent

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 2-66

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No. 898

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Petitioner,

v.

GIUSEPPE ERRICO,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINIONS BELOW

The majority and concurring opinions in the court of appeals are reported at 349 F.2d 541.

JURISDICTION

This court has jurisdiction under 28 U.S.C. 1254 (1). The petition for certiorari was received on January 12, 1966.

QUESTION PRESENTED

Respondent agrees with the statement of the question presented in the petition for certiorari.

STATUTE INVOLVED

Section 241 (f) of the Immigration and Nationality Act, 8 U.S.C. 1251 (f), provides:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

STATEMENT OF FACTS

Respondent accepts petitioner's statement of facts.

REASONS FOR DENYING THE WRIT

The government bases its argument for granting the writ of certiorari largely on the conflict between the decision of Court of Appeals for the Ninth Circuit in the instant case, and that of the Court of Appeals for the Second Circuit in *Scott* v. *Immigration and Naturalization Service*, 350 F.2d 279. The government has gone

so far as to support the petition for writ of certiorari in the *Scott* case.

However, *Errico* and *Scott* are the only court of appeals cases interpreting Section 241 (f) in spite of the fact that Section 241 (f) was enacted on September 26, 1961. Respondent suggests that the issue in this case is not substantial enough to warrant review by this court at this time.

It must be observed that where the Immigration and Naturalization Service has found its strict and harsh administration of the immigration law cramped by court opinion, it is frequently gone back to Congress for an amendment which it finds, for some reason, relatively easy to obtain. Perhaps that will be done in the event the decision in *Errico* is permitted to stand.

Another reason why the Government's Petition for Certiorari seems rather strained is that it has apparently been unable to make up its mind as to its own interpretation of Section 241 (f).

When the proceeding against *Errico* began, a Special Inquiry Officer ruled against him because he was unable to obtain a waiver of lack of documentation and further, that he had no valid immigration visa under Section 212 (a) (20). After the matter had been certified to the Board of Immigration Appeals, the trial attorney's brief dealt only with this issue and did not in any way raise the question of *Errico's* ability to meet the Italian quota.

The Board of Immigration Appeals' opinion does not

even discuss Section 241 (f), and it was not until the matter was briefed and argued in the Ninth Court of Appeals that the Government raised the point that *Errico* could not obtain an immigrant visa because the Italian quota was over-subscribed.

Before the Supreme Court is expected to take up its time in considering the correct interpretation of a statute which has had only two cases decided under it in courts of appeal, surely the United States Government should first be required to make up its mind how it interprets the statute, particularly since in all likelihood it was drafted by attorneys for the Immigration and Naturalization Service.

Finally, respondent believes that the decision of the Ninth Court of Appeals was absolutely correct and that the logic in the opinion is impeccable. As a practicable matter too, the Ninth Circuit's opinion results in carving out an area in which the humanitarian purposes of 241 (f) might be fulfilled, whereas the Government's interpretation would lead to the ridiculous result that 241 (f) would only be applicable if an immigrant fraudulently obtains a visa while at the same time he might have, or in fact did, obtain another visa under another section of the law without fraud.

The Immigration and Nationality Act is a harsh law, often administered in a harsh and oppressive manner. From time to time the Congress has felt it advisable to introduce provisions to soften this law and surely 241 (f) was such an amendment. But rather than accepting 241 (f) at its face value, the Immigration and Natural-

ization Service, in line with its usual policy, persists in attempting to so interpret it as to make it utterly meaningless. Respondent feels that the argument set forth in the Court of Appeals' opinion in his case is ample refutation of the Government's position as stated in its Petition for Certiorari. Particularly, the Government persists in identifying 241 (f) as having been enacted in the 1957 Act. As the Court of Appeals correctly discerns, Section 7 of the 1957 Act was repealed in 1961 and was expressly conditioned upon the consent of the Attorney General in the granting of relief to an alien who misrepresented his qualifications for admission. The present Section 241 (f) is in no way conditioned for its operation upon the discretion of the Attorney General, and considerably broadens the scope of relief available to an alien who made misrepresentations. To interpret the words "otherwise admissible" to mean that the alien must have been qualified to enter the country under a quota (which would have made his misrepresentations irrelevant and unnecessary) is to so emasculate this section of the law as to render it a virtual nullity.

CONCLUSION

The Petition for a Writ of Certiorari should be denied. Respondent takes no position with respect to the Petition for Certiorari in the *Scott* case.

Respectfully submitted,

EDWIN J. PETERSON
Attorney for Respondent
FRANK M. IERULLI
GERALD H. ROBINSON
Of Counsel for Respondent

FEBRUARY 1966.

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 898

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER

v.

GIUSEPPE ERRICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

Respondent contends in his brief in opposition (p. 3) that since there have been only two court of appeals cases interpreting Section 241(f) the issue in this case is not substantial enough to warrant review by this Court. This is erroneous. We are informed by the Board of Immigration Appeals that there are two cases presently pending before it which involve the same issue under Section 241(f) and the New York office of the Immigration and Naturalization Service reports that this issue has been involved in at least fifteen cases within its jurisdiction at the hearing level over the past eighteen months. Moreover, as

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pointed out in the government's petition for certiorari, the issue in this case vitally affects many aliens and will continue to exist under the new immigration law (Pet. 5 and n. 5). The conflict between the Second and Ninth Circuits should therefore be resolved by this Court.

THURGOOD MARSHALL,
Solicitor General.

MARCH 1966

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v.

GIUSEPPE ERRICO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The main and concurring opinions in the court of appeals (R. 16-26)[1] are reported at 349 F. 2d 541. The opinions of the special inquiry officer (R. 3-9) and of the Board of Immigration Appeals (R. 10-12) are not reported.

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[1] In addition to the printed record in this Court ("R."), we have lodged the certified administrative record with the Clerk of the Court.

JURISDICTION

The judgment of the court of appeals (R. 26) was entered on July 9, 1965, and a petition for rehearing was denied on August 14, 1965 (R. 27). On October 31, 1965, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including January 11, 1966. The petition was filed on that day and was granted on March 21, 1966. 383 U.S. 941. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

An alien who would be deportable because he secured entry through fraud or misrepresentation is excused from deportation on that account by Section 241(f) of the Immigration and Nationality Act if he has close relatives in the United States and was "otherwise admissible at the time of entry". Respondent gained entry as a preference immigrant by knowingly misrepresenting his eligibility for preferential quota status. He has the necessary familial ties in the United States. The question is whether he is entitled to the waiver of deportation provided by Section 241(f) even though, at the time of his entry, he could not have been lawfully admitted in accordance with his true status as a non-preference immigrant because the quota of his country then was substantially oversubscribed.

STATUTES INVOLVED

At the time of respondent's entry and of the final deportation order against him, Section 211(a) of the

Immigration and Nationality Act, 66 Stat. 181, as amended, 8 U.S.C. 1181(a), provided, in part,

> No immigrant shall be admitted into the United States unless at the time of application for admission he * * * (4) is of the proper status under the quota specified in the immigrant visa * * *.

For ready reference, Section 211 is set forth in its entirety in the Appendix, both in its original form and in its present form, as amended effective December 1, 1965.

Section 212(a) of the Immigration and Nationality Act, 66 Stat. 182, as amended, 8 U.S.C. 1182(a), provides, in part:

> (a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States.
>
> * * * *
>
> (19) Any alien who seeks to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact.

Section 241(a) of the Immigration and Nationality Act, 66 Stat. 204, as amended, 8 U.S.C. 1251(a), provides, in part:

> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> (1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry.

Section 241(f) of the Immigration and Nationality Act, 71 Stat. 640, as amended, 8 U.S.C. 1251(f), provides:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

The predecessor of Section 241(f), Section 7 of the Act of September 11, 1957, P.L. 85-316, 71 Stat. 639, is set forth in the Appendix.

STATEMENT

Respondent is a native and citizen of Italy, now 32 years of age. In order to procure entry into the United States he falsely represented that he was a skilled mechanic, with specialized experience in repairing foreign cars. On the basis of this representation, supported by false affidavits of alleged employers, he was granted first preference status under the Italian quota, then awarded to certain immigrants with "high education, technical training, specialized experience, or exceptional ability" whose skills were needed in the United States.[2] He was admitted to the

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[2] First preference status at the time of respondent's entry was accorded under Section 203(a)(1) of the Immigration and Nationality Act, 66 Stat. 178. Substantial revisions in the quota system and in the preference categories were in-

United States on October 17, 1959. He was accompanied by his wife, also a native and national of Italy, whom he had married shortly before embarking for the United States, and who was also admitted as a first preference immigrant under the Italian quota, with a derivative status depending on the first preference status of her husband.[3] A child was born to them in this country on August 3, 1960, and acquired United States citizenship at birth (R. 3-6).

Deportation proceedings were commenced against respondent in September, 1963, charging that he had been excludable at the time of entry because he had not entered under the proper quota status (R. 1-2). At the hearing before a special inquiry officer (at which he was represented by counsel), respondent did not seriously dispute the falsification in securing entry into the United States. However, he contended that, because he had an American-citizen child and

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augurated by the Act of October 3, 1965, P. L. 89-236, 79 Stat. 911. Effective December 1, 1965, the former preferences were abolished and new preference categories were established for persons entering thereafter. A person with the qualifications asserted by respondent could now seek a sixth preference status. See § 203(a)(6), Immigration and Nationality Act, 8 U.S.C. (1964 ed., Supp. 1) 1153(a)(6), as amended by § 3, Act of Oct. 3, 1965, P. L. 89-236, 79 Stat. 912.

[3] Derivative and equivalent quota preference was given to the spouse of a first preference immigrant by Section 203(a)(1) of the Immigration and Nationality Act, 66 Stat. 178, as amended by Section 3 of the Act of September 11, 1957, 71 Stat. 639, 8 U.S.C. 1153. Similar derivative status for the spouse and child of any preference immigrant is now conferred by Section 203(a)(9) of the Immigration and Nationality Act, as amended, 8 U.S.C. (1964 ed., Supp. 1) 1153(a)(9).

parents who were lawful residents of the United States, his deportation was barred by Section 241(f) of the Immigration and Nationality Act, as amended. The special inquiry officer ruled that respondent was deportable as an excludable alien at the time of entry because of his failure to comply with the quota requirements and that relief under Section 241(f) was not available since that provision forgave deportability for misrepresentation only if the alien was "otherwise admissible" when he entered—not respondent's situation. The Board of Immigration Appeals affirmed the deportation order, holding that Section 241(f) was inapplicable to respondent because he was not entitled to the preferred quota status under which he entered the United States and was ineligible for a waiver of that ground of inadmissibility under Section 211(c).[4]

Respondent then brought review proceedings in the United States Court of Appeals for the Ninth Circuit (R. 13). The court agreed that petitioner had improperly obtained preferred quota status and that this defect could not be waived. However, the court ruled that respondent's inadmissibility stemmed from a mis-

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[4] At the time, Section 211(c) (reproduced in the Appendix) authorized the Attorney General to admit aliens who, like respondent, were excludable for visa defects but only if the defect was unknown to the applicant and not reasonably discoverable prior to his embarking for the United States. The inquiry officer (R. 7), the Board (R. 11-12), and the court of appeals (R. 17-18) all concurred in the finding that respondent was ineligible for this relief because he knew he was not entitled to the preference status recited in his visa before he left Italy.

representation and that his resulting deportability had been amnestied by Section 241(f) of the Immigration and Nationality Act. Accordingly, it vacated the deportation order.

SUMMARY OF ARGUMENT

Respondent is admittedly deportable for having entered the United States through misrepresentation. Since he has an American-born child and resident alien parents Section 241(f) of the Immigration and Nationality Act waives his deportability on account of his false statement if he was "otherwise admissible at the time of entry". Respondent, however, did not satisfy this condition because he could not meet the quota restrictions which were then oversubscribed for many years into the future.

I

1. The apparent premise of the court below is that Section 241(f) excuses not only a material misrepresentation, but also an underlying bar to admissibility which the false statement concealed; this is at odds with the language of the provision, which only waives deportation "on the ground" that entry had been procured through misrepresentations, and only in the case of an alien who was "otherwise admissible at the time of entry."

2. The legislative background of Section 241(f) confirms its limited purpose to grant relief only from the effect of a misrepresentation. The statute was fashioned to deal with severe provisions of earlier refugee legislation, and of the present statute, which

perpetually barred aliens who had made willful misrepresentations in order to enter the United States. When amelioration was provided in 1957 the principal purpose was to alleviate the harsh consequences for refugees. The provisions concerned with close relatives were designed, as the Committee Report indicates, to deal with a relatively minor problem involving "mostly Mexican nationals." The statute was not broadened by the 1961 amendment making it permanent legislation. There is thus no warrant for the expansive reading indulged by the court below.

3. The thesis of the court below—that Section 241 (f) provided "absolute relief" for falsifiers—is inconsistent with the disposition of Congress in comparable situations. A number of statutes allow various remedies to aliens with close family ties or long residence in the United States. But none of these humanitarian measures affords the sweeping waiver suggested below. Each is circumscribed by conditions and requires the exercise of discretion. The fact that relief here is automatic rather than discretionary indicates that the objective was simply to waive a special and technical ground of deportability, generated by the misrepresentation itself, rather than to waive all underlying grounds of deportation.

II

The alternative suggestion that the "otherwise admissible" condition relates only to qualitative standards, rather than quota requirements, finds no support in the language of the statute itself. If Congress had wished to adopt such a limitation it could easily

have recorded its desire in precise language, as it has done on many other occasions. Moreover, the legislative history reveals an unmistakable wish to preserve quota restrictions. This is seen in the language of the 1957 Act itself, in the positive expressions of its legislative sponsors, and in the Committee Reports on the 1961 amendments.

The supposition that "otherwise admissible" is a term of art, limited to qualitative requirements, is unsupportable. There is no consistent usage, and the connotation depends on the context. In most situations, as here, "otherwise admissible" has clearly included both qualitative and quota requirements.

Under the precise formulas of the immigration law only the spouse or the unmarried child of an American citizen, or the parent of an adult citizen, is entitled to exemption from the quota. Respondent can qualify for none of these exemptions. Yet the theory of quota waiver would mean that, although the statute grants no exemption to aliens in respondent's situation who are in the United States legally or seeking to enter lawfully from abroad, it does grant such an exemption if they have entered fraudulently. We cannot believe such an anomalous result was intended by Congress.

Nor do we share the view of the court below that a failure to adopt its construction would make Section 241(f) inoperative. There are a number of situations in which the benefits of the provision can be, and have been, applied. These include misrepresentations by natives of Western Hemisphere countries (not subject to quota limitations), by returning lawful resi-

dents, by aliens whose substantive ground for exclusion can be waived, and by those whose falsehoods relate to matters which, though relevant, do not actually make them inadmissible.

By falsifying, respondent was able to bypass long waiting lists for immigrants from Italy. It is hardly likely that Congress intended to reward such deception by giving him quota preference greater than he could then or now have obtained legitimately.

ARGUMENT

At the time of his entry into the United States in 1959 respondent was excludable under the Immigration and Nationality Act on at least two grounds. First, not being a specialized auto mechanic,[5] he did not have the preferred "status under the quota specified in [his] immigrant visa" § 211(a)(4), 8 U.S.C. 1181(a)(4)).[6] And, second, in claiming a skill he knew he did not possess in order to obtain preferred status when the quota for his country was oversubscribed, he procured a visa and entry into the

[5] See note 2, *supra*.

[6] Section 211 of the Act, 8 U.S.C. 1181, was substantially revised by § 9 of the Act of October 3, 1965, P.L. 89-236, 79 Stat. 917. The statute in its original and its amended form is set forth in the Appendix. The 1965 amendment was part of the comprehensive legislation ending the national origins quota system, effective July 1, 1968. In its present form § 211 does not include the former clause (a)(4). Although this revision in language was not explained in the legislative reports, the apparent reason was that the elimination of national quotas would make such a provision obsolete.

United States "by willfully misrepresenting a material fact" (§ 212(a)(19), 8 U.S.C. 1182(a)(19)).[7] As an alien excludable at the time of entry, respondent was subject to deportation under Section 241(a)(1) of the Act (8 U.S.C. 1251(a)(1)), in the absence of some special statutory dispension. Because he knew before he embarked for the United States that he was not entitled to the preference status recited in his visa, respondent was found ineligible for the discretionary relief authorized by Section 211(c) (8 U.S.C. 1181(c)).[8] However, having an American citizen child and parents who are lawful residents of this country,[9] he could invoke Section 241(f) (8 U.S.C.

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[7] See, also, §§ 212(a)(20), (21) (8 U.S.C. 1182(a)(20), (21)), which, so far as here relevant, declare inadmissible those whose visas are invalid for one reason or another. Although the first of these provisions is discussed in the opinions below (R. 9, 11-12, 24), we do not press these grounds for exclusion in this Court. As applied to respondent, the cited sections largely overlap Section 211(a). In any event, our argument does not depend on additional causes for exclusion.

[8] See note 4, *supra*.

The 1965 amendment of § 211, referred to in note 6, *supra*, and set forth in the Appendix, also eliminated former subsection (c) and there is no comparable waiver provision in the amended statute. Again there was no explanation. However, the elimination of the nationality quotas and of the specific references to improper quota charges apparently persuaded those who drafted this legislation that the waiver provision was no longer necessary.

[9] Respondent's parents and his brothers and sisters came to the United States in 1956, thus preceding him by three years. His son was born here in 1960, some ten months after respondent's entry and three years before the deportation proceedings were initiated.

1251(f)), which waives deportation in the case of aliens with close relatives in the United States who obtained entry by fraud but were "otherwise admissible" at the time. The question is whether respondent was "otherwise admissible" within the meaning of Section 241(f), despite the fact that he was excludable at entry not only an account of his misrepresentation, but also because he was not entitled to the preference quota status reflected in his visa and, as an ordinary quota immigrant, would not have been able to secure an entry visa for many years. Put another way, the issue is whether Section 241(f) excuses only the false statement or, also, the underlying bar to admissibility which the misrepresentation concealed and waives deportation on that account as well.

Disagreeing with the special inquiry officer and the Board of Immigration Appeals, the court of appeals resolved the question in favor of respondent. The exact scope of the ruling below is not clear. But, even read as narrowly as possible, we believe it carries much too far and grossly misconceives the intent of Congress. We turn first to the broader rule which the main opinion seems to announce, leaving for later discussion the somewhat narrower proposition advanced in Judge Duniway's concurrence.

I

Section 241(f), Where Applicable, Only Waives Deportability for Misrepresentation; It Does Not Remove an Additional Bar to Admissibility Which the False Statement has Temporarily Concealed, or Arrest Deportation on that Account.

The main opinion of the court of appeals states the governing rule as follows: "[u]nder its plain terms, [Section 241(f) of the Immigration and Nationality Act] purports to grant *absolute relief* to aliens who have close familial ties in the United States and who have gained entry into the United States through 'fraud or misrepresentation'" (R. 20, emphasis added; see also, R. 22). Literally, this is saying that an alien like respondent who misrepresents his skills and thereby obtains a preference visa is absolutely excused from deportation even though he is also inadmissible for some wholly independent reason unrelated to the false statement—say, narcotic trafficking (see § 212(a)(23), 8 U.S.C. 1182(a)(23)). But that would be so obviously disregarding the condition of Section 241(f) that the waiver is available only to an "*otherwise admissible*" alien that we cannot attribute such a proposition to the court. Perhaps in speaking of "absolute relief," the court only means to characterize the remedy, where applicable, as mandatory, *i.e.*, effective by operation of law, rather than discretionary, *i.e.*, within the dispensing power of the Attorney General. Although the opinion is unclear, the court of appeals presumably construes the provision as excusing both the misrepresentation and the underlying cause of inadmissibility which the misrepresen-

tation sought to conceal, but not every unrelated ground for exclusion. It is on that premise that we discuss the question.

As we understand the main opinion below, it holds that Section 241(f) waives the normal sanction of deportation on account of the fact misrepresented no matter what it is—whether it be trafficking in narcotics, conviction of a felony, or (as here) ineligibility for a preference visa. The apparent rationale is that since Section 241(f) excuses the misrepresentation (in the case of an admitted alien with close relatives in this country), the false statement must be accepted as true for all purposes, barring the Immigration Service from going behind it to notice an additional cause of inadmissibility. Whatever surface plausibility there may be in such a rule, we submit that it distorts the statute, misapprehends its purpose and creates a reward for fraud at odds with the scheme of the immigration law.

A. *The text of Section 241(f)*

The language of the statute itself seems directly opposed to the construction adopted by the court below. Section 241(f) does not purport to waive all causes for deportation, but only deportability "*on the ground* that they were excludable at the time of entry" for having procured documents or entry through fraud (emphasis added). A familiar precept counsels that the specification of one ground excludes others. The purpose of Congress to waive only this cause of deportability is underscored by the reserva-

tion that the waiver is activated only if the alien was "otherwise admissible at the time of entry".

It is difficult to appreciate how this language can be read as permitting waiver of a deportation charge other than one resting "on the ground" that entry had been procured through fraud or misrepresentation. Indeed, it would be possible to read Section 241 (f) as restricted to a charge of entry in violation of Section 212(a)(19) of the statute, 8 U.S.C. 1182(a)(19), which erects an exclusion for misrepresentations in language similar to that used in Section 241 (f). Other deportation charges could emerge from such a misrepresentation, *e.g.*, for charge to the wrong quota, for defective visa, for entry without inspection, or for perjury. But the administrative authorities have read the statute generously, in the light of its manifest purpose, and have ruled that the waiver extinguished any deportation charge resulting from the misrepresentation itself, regardless of the section of the law under which the charge was brought. *Matter of S—*, 7 I. & N. Dec. 715 (1958); *Matter of D'O—*, 8 I. & N. Dec. 215 (1958); *Matter of Y—*, 8 I. & N. Dec. 143 (1959). Thus, here, the special inquiry officer did not hold respondent ineligible for relief under Section 241(f) on the technical ground that the visa misdescribed his status—a cause of exclusion separate from the misrepresentation, although directly attributable to it—but, rather, because, paper irregularities to one side, respondent was not otherwise eligible for entry.

But in the face of the restrictive language of the provision and the declaration that the alien must have been "otherwise admissible", there is no basis for supposing that Congress intended to waive grounds for deportation which do *not* depend on a misrepresentation. Because Section 241(f), in excusing a misrepresentation also forgives incidental procedural flaws in the admission process which are readily correctable by substituting new papers, it does not follow that Congress meant to remove an irremediable substantive bar to entry. To illustrate, suppose that an alien is excludable for criminal record, subversive activity, narcotics traffic, or failure to comply with quota requirements, that he lies concerning his background and thereby succeeds in entering the United States, and that thereafter he has a child in this country. In that situation, we believe Section 241(f) was designed to forgive deportability for the lie and for the resulting irregularities in the papers, but not for the grounds of exclusion which preceded and were independent of the lie. This interpretation of Section 241 (f) and its predecessors has been adopted by every judicial and administrative decision, other than that of the court below. *Langhammer* v. *Hamilton*, 295 F. 2d 642, 648 (C.A. 1) (Communist Party membership); *Bufalino* v. *Holland*, 277 F. 2d 270, 278 (C.A. 3), certiorari denied, 364 U.S. 863 (lack of proper documents and ineligibility for waiver of documents); *Scott* v. *I.N.S.*, 350 F. 2d 279 (C.A. 2), certiorari granted, 383 U.S. 941, No. 91, this Term (evasion of quota requirements); *Matter of D'O—*, 8 I. & N. Dec. 215 (same); *Matter of Slade*, 10 I. & N. Dec.

128 (same); *Matter of S—*, 9 I. & N. Dec. 496, 502 (prior conviction for crime).[10]

In short, to be "otherwise admissible" at the time of entry, the applicant for relief under Section 241 (f) must show that he could have been admitted even if he had not lied. An alien, like respondent, who could not meet quota requirements, cannot make that showing.

B. *The legislative history of Section 241(f)*

An understanding of the narrow scope of Section 241(f) is aided by an examination of its legislative history. The statutory development begins with Section 10 of the Displaced Persons Act of June 25, 1948, 62 Stat. 1009, 1013. Although this legislation initiated a humanitarian program which eventually made possible the entry of 400,000 refugees who were homeless as the result of World War II, it included a number of restrictive provisions. One of these was Section 10, which provided that any person who wilfully made a misrepresentation for the purpose of gaining admission under its terms "shall thereafter not be admissible into the United States." Because such misrepresentations usually concerned the alien's place of origin and were made to avert repatriation

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[10] See, also, *Ntovas* v. *Ahrens*, 276 F. 2d 483 (C.A. 7), certiorari denied, 364 U.S. 826; *Rutledge* v. *Esperdy*, 200 F. Supp. 231 (S.D.N.Y.), affirmed *per curiam*, 297 F. 2d 532 (C.A. 2), which hold that aliens deported for overstaying temporary entry could not claim that their deportation orders should have been predicated on misrepresentations and that, since they had close family ties, this would have entitled them to a waiver of deporability.

to Iron Curtain countries, Section 10 was said to impose "one of the severest penalties provided in any immigration law." See *The D P Story*, The Final Report of the United States Displaced Persons Commission (1952), p. 96. Yet it was re-enacted in the second major law for the reception of post-war refugees. See § 11(a) of the Refugee Relief Act of August 7, 1953, 67 Stat. 400. And it was in the meantime extended to other aliens in a comprehensive revision and recodification of the immigration and nationality laws adopted in 1952. § 212(a)(19), 8 U.S.C. 1182 (a)(19). See S. Rep. 1137, 82d Cong., 2d Sess., p. 10-11.

The idea of lessening the burden of this sanction, at least for refugees, arose in the legislative discussions preceding the enactment of the 1952 Act. Indeed, the House Committee added a proviso to excuse misrepresentations made by refugees in order to escape persecution, if such representations were not otherwise material to admissibility. H. Rep. 1365, 82d Cong., 2d Sess., pp. 50, 134. Although sympathetic to the proposal, the Conference Committee declined to enact the proviso into positive law. It eliminated the proviso, with the following guarded exhortation (H. Rep. 2096, 82d Cong., 2d Sess., p. 128):

> It is also the opinion of the conferees that the sections of the bill which provide for the exclusion of aliens who obtained travel documents by fraud or by willfully misrepresenting a material fact, should not serve to exclude or to deport certain bona fide refugees who in fear of being forcibly repatriated to their former homelands misrepresented their place of birth when apply-

> ing for a visa and such misrepresentation did not have as its basis the desire to evade the quota provisions of the law or an investigation in the place of their former residence. The conferees wish to emphasize that in applying fair humanitarian standards in the administrative adjudication of such cases, every effort is to be made to prevent the evasion of law by fraud and to protect the interest of the United States.[11]

President Truman vetoed the bill, deploring the harshness of its provisions regarding misrepresentations made by "refugees from tyranny". H. Doc. 520, 82d Cong., 2d Sess., p. 6. But the bill became law when the President's veto was overridden by Congress. Act of June 27, 1952, P.L. 414, 82d Cong., 2d Sess., 66 Stat. 163.

Thereafter, the Attorney General found his hands tied by the unqualified language of the statute regarding misrepresentations, believing that the sentiments expressed in the Conference Report did not warrant his waiver of misrepresentations by refugees in disregard of the statutory mandate. See H. Rep. 1199, 85th Cong., 1st Sess., p. 10. Congress finally authorized relief in 1957. The omnibus legislation of that year included many modifications of excessive hardships that had developed in the administration of the 1952 Act. Section 7 of the Act of September 11, 1957 (P.L. 85-316, 71 Stat. 640), which is set forth in full in the Appendix, alleviated for the first time the severity of the statutory provisions prescribing ex-

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[11] The references in the opinion of the court of appeals to "fair humanitarian standards" (R. 20, 21) appear in the above quotation from the Conference Report on the 1952 Act.

clusion and deportation for misrepresentations. Briefly, the statute provided that deportation for past irregular entries because of misrepresentation would be waived in the case of the following classes of aliens "otherwise admissible at the time of entry":

> (1) Aliens with specified close relatives in the United States.
>
> (2) Refugees admitted between 1945 and 1954, who established to the satisfaction of the Attorney General that their misrepresentation regarding nationality, place of birth, identity, or residence was predicated on fear of persecution and "was not committed for the purpose of evading the quota restrictions of the immigration laws."

A third provision of Section 7 provided for discretionary waiver of inadmissibility for misrepresentation on behalf of aliens with the specified close relatives who thereafter applied for entry, "if otherwise admissible".

The limited objectives of Section 7 of the 1957 Act are emphasized in the related Congressional reports. The House Report (H. Rep. 1199, 85th Cong., 1st Sess.) stated that in various sections of the bill, "Waivers of specific causes for exclusion to prevent hardship in certain cases are included" (p. 3), and that the relief provision for refugees was designed "to condone what was generally considered to be a justifiable misrepresentation" (p. 9). With respect to the waiver for close relatives of persons in the United States, the House Committee commented (p. 11):

> In respect to expulsion of aliens who are the spouses, parents, or children of United States citizens or lawfully resident aliens, and who are already in the United States, misrepresentation in obtaining documentation or entry would not be a ground for deportation if the aliens were otherwise admissible at the time of entry under the immigration law. The latter category of aliens includes mostly Mexican nationals, who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States, establish a family in this country, and were subsequently found to reside in the United States illegally.

The Senate Committee merely observed that the proposed legislation "would provide for the correction of a situation" resulting in excessive hardships. S. Rep. 1057, 85th Cong., 1st Sess., p. 5.

Section 7 of the 1957 legislation was incorporated, with some modifications, into the permanent statute in 1961, by omnibus legislation making a number of other amendments. Act of September 26, 1961, P.L. 87-301, 75 Stat. 650, 655, §§ 15-16. The authorization of discretionary waiver of excludability for misrepresentations by close relatives of American citizens was codified as Section 212(h), 8 U.S.C. 1182(i);[12] the waiver of deportability for misrepresentations by close relatives was codified as Section 241(f); and the waiver provision for misrepresentations by refugees

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[12] Section 212(h) was redesignated as Section 212(i) of the Act by Section 15(c) of the Act of October 3, 1965, P.L. 89-236, 79 Stat. 919. The 1965 legislation made no other changes in the above statutory provisions.

was eliminated on the ground that it "[had] served its humanitarian purpose". H. Rep. 1086, 87th Cong., 1st Sess., p. 37. The court of appeals to the contrary notwithstanding,[13] the 1961 revision worked no substantial change relevant to our problem. There is not a word in the legislative materials to suggest a desire for expanded coverage. On the contrary, the House Judiciary Committee, which authored the new provisions, expressly declared that they were intended to "codify existing law". *Ibid.*

We believe the legislative history demonstrates that the waiver of deportability for misrepresentations was a measure with limited objectives. The court below has emphasized the humanitarian purpose of Section 241(f). We fully agree. But this generous impulse hardly warrants disregarding the language and evident purpose of the statute.

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[13] In assessing the legislative history, the court of appeals asserts (R. 21) that Section 7 of the 1957 Act sanctioned waiver of deportability only for those who had made representations relating to nationality, place of birth, identity, or residence and that the 1961 amendment liberalized the statutory authorization by removing the limitations restricting relief. It made a palpable error in reading these statutes. The fact is that the restricted provision of the 1957 Act on which the court below focused applied only to refugees and, as indicated above, was eliminated as obsolete by the 1961 codification. In this respect, the later statute can be regarded as less liberal. But Section 7 of the 1957 Act (reproduced in full in the Appendix) also granted a *non-discretionary* waiver of deportation on account of *any* misrepresentation by aliens with close relatives in the United States who had entered by fraud. This was substantially unchanged by the 1961 provision which became Section 241(f).

C. *Section 241(f) in the overall statutory scheme*

Although other provisions of the Immigration and Naturalization Act have offered escape from deportation to aliens with close family ties in the United States, we are aware of none which has afforded the absolute and unconditional relief suggested by the court of appeals. Indeed, even where the underlying humanitarian appeal was stronger, Congress has imposed restrictions on relief and, with respect to those who qualify, it has authorized the Attorney General to deny a waiver in his discretion. See *Hintopoulos* v. *Shaughnessy*, 353 U.S. 72, 77.

Thus, Section 244 (8 U.S.C. 1254) authorizes suspension (and ultimately waiver) of deportation in the case of an alien with extended residence in the United States whose deportation would result in "extreme" or "exceptional and extremely unusual" hardship to the alien or to his close relatives in the United States. Although the reach of this statute spans all grounds for deportation, its benefits are available only to those who meet prescribed standards of residence, good moral character and hardship (Sec. 244(a)), and are withheld from aliens who entered as crewmen after June 30, 1964, or who entered as exchange visitors, or who are natives of contiguous countries or adjacent islands (Sec. 244(f) (8 U.S.C. (1964 ed., Supp. 1) 1254(f)). Moreover the statute specifies that suspension of deportation can be granted only in the discretion of the Attorney General and that any such grants by the Attorney General must be submitted to Congress for its approval (Section 244(c)).

Another important remedy is that authorized by the "adjustment of status" provision of Section 245

(8 U.S.C. 1255) which enables temporary entrants to achieve permanent-residence status without leaving the United States. In practice, the usual beneficiaries of the provision are aliens who have married American citizens during their temporary sojourn here. But Congress has withheld these benefits from crewmen (Sec. 245 (a)), natives of Western Hemisphere countries (Sec. 245(c)), and exchange visitors (Sec. 212(e), 8 U.S.C. 1182(e)). Moreover, the applicant for such relief must show that he "is eligible to receive an immigrant visa and is admissible to the United States" and an immigrant visa must be immediately available to him (Sec. 245(a)). And the statute stipulates that adjustment of status *may* be allowed by the Attorney General "in his discretion and under such regulations as he may prescribe" (*id.*).

Similarly, Section 249 (8 U.S.C. 1259), which sanctions the award of permanent status to aliens with long residence in the United States, is hedged by conditions. See *Mrvica* v. *Esperdy*, 376 U.S. 560. Among others, applicants who would be inadmissible for specified misconduct are ineligible. And, again, the grant of relief is confided to the discretion of the Attorney General.

Still another dispensation is afforded by Section 212(e) (8 U.S.C. 1182(e)), which permits waiver of a requirement that exchange visitors must reside for two years in a foreign country before they can become permanent residents of the United States. One ground for such waiver is that departure from the United States "would impose exceptional hardship"

on the alien's spouse or child in the United States. Here, also, application must be made to the Attorney General, who "may" grant the waiver if he finds that admission of the alien "[would] be in the public interest." And Congress has indicated that relief under this provision should be awarded sparingly. See Gordon and Rosenfield, *Immigration Law and Procedure* (1965 Rev. with Supplement), Sec. 6.8g.

And finally, aliens excludable for crimes or prostitution may be admitted for permanent residence under Section 212(h) (8 U.S.C. 1182(h)). But, again, the availability of relief is severely circumscribed—limited to cases in which the alien's close relative here would otherwise suffer "extreme hardship"—and the waiver is wholly discretionary with the Attorney General.[14]

These measured grants in analogous situations illuminate the legislative design with respect to Section 241(f). It is unreasonable to suppose that Congress imposed conditions and limitations upon the award of permanent residence in all other cases involving aliens with long residence (§§ 244 and 249) or close family ties in the United States (§§ 244, 212(e) and

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[14] We cannot appreciate why the court below apparently thought this provision inconsistent with a reading of Section 241(f) that does not excuse underlying grounds of excludability (See R. 22). In three respects Section 212(h) is more restricted: (1) it applies only in "hardship" cases; (2) it waives only excludability, not deportation after an illegal entry (see *Jerez* v. *Esperdy*, 281 F. 2d 182 (C.A. 2), certiorari denied, 366 U.S. 905); and, finally, (3) relief is wholly discretionary, not automatic. Moreover, Section 212(h), like Section 241(f), requires that the alien be "otherwise admissible."

212(h)), or aliens who had come here legally and sought to remain (Sec. 245), and at the same time directed the unconditional removal of all restrictions for persons who had entered fraudulently. On the contrary, the very fact that, unlike the other provisions, Section 241(f) prescribes automatic rather than discretionary relief, indicates that it was meant to have a very limited scope, excusing only a special and technical ground of deportability. We conclude that reading Section 241(f) to waive not only the misrepresentation but also the underlying substantive bar to admissibility would do violence to the overall statutory scheme.

II

Section 241(f), Where Applicable, Waives Deportability Only for Aliens Who Are "Otherwise Admissible" in Every Sense; It Does Not Merely Require Compliance With Qualitative Standards

The alternative suggestion is that in restricting benefits under Section 241(f) to aliens who were "otherwise admissible" Congress referred only to admissibility on qualitative grounds, and meant to waive compliance with "quantitative" quota requirements. That was the proposition advanced by the concurring opinion below (R. 25-26) and the main burden of the argument considered and rejected by the Second Circuit in the companion *Scott* case, No. 91, this Term. We believe this construction of the statute is equally unsound.

1. In the first place, such a qualified reading finds no support in the language of the statute itself. In

extending relief from deportation for misrepresentations to aliens who are "otherwise admissible", Section 241(f) does not suggest a waiver of compliance with quota requirements. Entry into the United States is conditioned upon a wide spectrum of qualifications, which can be classified as qualitative, numerical, and documentary, each of which must be satisfied in the absence of an express statutory waiver. When Congress wishes to excuse any prescribed condition for entry, it finds no difficulty in making its meaning plain. Its failure to qualify the requirement that the alien be "otherwise admissible" in Section 241(f) is sufficient indication that eligibility for a visa under the quota remains a necessary condition for relief.

Thus, the War Brides Act, 59 Stat. 659, specifically expressed the desire to eliminate documentary and medical requirements for war brides of American soldiers, in permitting them to enter the United States "if otherwise admissible under the immigration laws". See *Bonham* v. *Bouiss*, 161 F. 2d 678 (C.A. 9). Similarly, Section 212(d)(7) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(7)) subjects immigrants coming to the continental United States from certain insular possessions to all requirements of the immigration laws, except the documentary requirements. Section 211(b), in its original and amended forms (set forth in the Appendix) permits waiver of the documentary requirements for certain "otherwise admissible" aliens. Section 249 (8 U.S.C. 1259) authorizes the grant of permanent residence through registry to an alien who is "not inadmissible under section 212(a) insofar as it relates

to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens". And Section 244 (8 U.S.C. 1254) prescribes different conditions for granting suspension of deportation and voluntary departure to different classes of deportable aliens. One can give numerous added examples of precise Congressional directions to deal differently with designated classes of aliens. *E.g.*, Sections 102, 202(a), 212(b), (c), (d), (g), and (h), and 242(b) and (e), and 252(a), Immigration and Nationality Act, as amended; 8 U.S.C. 1102, 1152(a), 1182(b), (c), (d), (g), and (h), 1252(b) and (e), and 1282(a). If a comparable exception were intended in Section 241(f), it would have been explicitly stated.

2. Moreover, Judge Duniway's interpretation of Section 241(f) overlooks its legislative background. In the Senate debate on the 1957 amendments the Chairman of the sponsoring committee, Senator Eastland, represented that the bill "does not touch the basic provisions of the McCarran-Walter Act" and that it "does not modify the national origins quota * * * system". 103 Cong. Rec. 15487 (Aug. 21, 1957). In the House of Representatives the leading protagonists made similar representations to the effect that the bill sought minor adjustments; it "makes no changes—no changes whatsoever, in the controversial issue of the national origins quota system" (Chairman Celler); it "does not change the national origin quota system" (Representative Chelf). 103 Cong. Rec. 16300, 16305-06 (Aug. 28, 1957). Also, the House Committee Report (H. Rep. 1199, 85th Cong.,

1st Sess., pp. 9-10), from which we have previously quoted, emphasized the primary concern to deal with misstatements by refugees and made the following observations regarding the provisions for misstatements by close relatives (p. 11):

> The latter category of aliens includes mostly Mexican nationals, who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States, establish a family in this country, and were subsequently found to reside in the United States illegally.

The "Mexican nationals" mentioned in this quotation are natives of a Western Hemisphere country, who were not then and are not now subject to quota limitations. See Sec. 101(a)(27), Immigration and Nationality Act, 66 Stat. 169, 8 U.S.C. 1101(a)(27), in its original form and as amended by Section 8, Act of October 3, 1965, P.L. 89-236, 79 Stat. 916.

Finally, the purpose to insist on adherence to applicable quota limitations was articulated in Section 7 of the 1957 Act (set forth in the Appendix), which was the predecessor of Section 241(f). Section 7 provided for discretionary waiver of a misrepresentation by a refugee of his nationality, place of birth, identity or residence, but only if such misrepresentation was made for the purpose of escaping persecution "and was not committed for the purpose of evading the quota restrictions of the immigration laws". It will be recalled that the Conference Committee Report on the 1952 Act (quoted at p. 18, *supra*) likewise declared that there was no wish to penalize refu-

gees, so long as their falsifications did not stem from "the desire to evade the quota provisions of the law".

3. The concurring opinion of Judge Duniway argues that "otherwise admissible" is a term of art which "refers to matters other than * * * quota status" (R. 25). The only support for this thesis is a reference to Section 211(a) in its original form (see the Appendix), which precluded admission of an immigrant unless he satisfied applicable quota and visa requirements and was "otherwise admissible".[15] Since Section 211 dealt with documentary and quota requirements the phrase "otherwise admissible" as there used necessarily connoted qualitative requirements. But this single usage in one context cannot be said to govern every other situation. Indeed, it hardly seems possible to attribute such coloration to like language in other contexts. Thus, Section 212(b), (8 U.S.C. 1182(b)) waives the literacy test for certain immigrants who are "otherwise admissible", and obviously contemplates the retention of all other entry requirements, qualitative, quantitative and documentary. So, also, the discretionary waivers of

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[15] The 1965 amendment to Section 211 (Appendix) revised the statute, eliminating the language in question because of the modification of the quota system. The statute still requires presentation of a "valid" immigrant visa and specifies that no visa presented before June 30, 1968 (when the national origins quota system ends) shall be deemed valid unless the immigrant is charged to his proper quota. The amended statute eliminates the authorization of waiver for innocent errors in quota classifications, formerly provided by Section 211(c). The phrase "otherwise admissible" still appears in Section 211(b) of the amended statute, which deals with waiver of documentary requirements for returning residents.

specified exclusionary grounds for entrant aliens with close relatives in the United States authorized by Section 212(g) (tuberculosis or mental defects), (h) (crime and prostitution), and (i) (misrepresentation) (8 U.S.C. 1182(g), (h) and (i)), apply only to immigrants who are "otherwise admissible", and plainly demand compliance with all other entry requirements, including quota restrictions. Indeed, the misrepresentations referred to in Section 212(i) are the same as those referred to in Section 241(f), and in speaking of aliens "otherwise admissible" Congress hardly could have required quota compliance in one instance and not the other. Judge Duniway's "term of art" thesis is thus untenable.

4. The supposition that Congress intended to waive quota compliance is incongruous when Section 241(f) is viewed as part of the total setting. At the time of the fraudulent entries by respondent in 1959 and by Mrs. Scott, the petitioner in the companion case, in 1958, the immigration quota of 5,666 for Italy and the subquota of 100 for Jamaica (under the British quota)[16] were committed far into the future. For the relevant years, the number of hopeful applicants on the quota waiting list for Italy was 162,612 and for Jamaica it was 21,759. In 1961 the respective figures had risen to 270,950 for Italy and 24,584 for

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[16] In 1962 Jamaica became an independent nation and was assigned a separate quota of 100. See Pres. Proc. 3503, October 23, 1962, 27 F.R. 10399, 77 Stat. 956. Among the amendments made by Secs. 1 and 8 of the Act of October 3, 1965, P.L. 89-236, 79 Stat. 911, 916, was one exempting from numerical restrictions the natives of any independent country of the Western Hemisphere.

Jamaica.[17] Thus, a questing immigrant from those countries would have to take his place at the end of a very long line,[18] and could not be reached for many years.[19] Yet, the suggestion is that by resorting to fraud respondent could bypass the tens of thousands of other immigrants ahead of him on the waiting list. What is more, the theory of quota waiver would reward deception by granting absolute and automatic exemption from quota restrictions to those who had entered by fraud in situations where other aliens with the same close relatives who sought entry or permanent residence status lawfully are entitled to only limited priorities or must apply for discretionary relief.

Indeed, the former preference and the present exemption for the parent of a United States citizen applies only if the child is over the age of twenty-one. Section 203(a)(2), Immigration and Nationality Act,

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[17] Visa Office Bulletins 36 (Nov. 6, 1958), 44 (July 8, 1959), and 74 (Jan. 25, 1961) U.S. Department of State. See, also, chart inserted in Congressional Record by Senator Eastland, 107 Cong. Rec. 19650 (Sept. 15, 1961).

State Department statistics showed a worldwide aggregate of prospective immigrants on quota waiting lists of 887,059 in 1958, 826,956 in 1959, and 966,673 in 1961, compared with a total annual quota of approximately 150,000. *Id.*

[18] Then, as now, the statute directed that immigrant visas should be issued strictly in the chronological order in which immigrants were registered on the quota waiting lists. Sec. 203(c), Immigration and Nationality Act, 66 Stat. 179. For similar provision of present statute, see Sec. 203(a)(8), as amended, 8 U.S.C. (1964 ed., Supp. 1) 1153(a)(8).

[19] See Visa Office Bulletins 31 (July 1, 1958) and 46 (Oct. 1, 1959), U.S. Department of State.

66 Stat. 178; Section 201(a) and (b), as amended, 8 U.S.C. (1964 ed., Supp. 1) 1151(a) and (b). And the married child of an alien lawfully admitted for permanent residence has never been accorded any preference or exemption under the quota, Section 203(a)(2), Immigration and Nationality Act, 66 Stat. 178; Section 203(a)(3), as amended, 8 U.S.C. 1153(a)(3). Thus, respondent, entitled to no exemption on account of his minor child here and to no priority because of his parents, would, under the ruling below, automatically acquire exempt status merely because he has engaged in deception. So, also, he would fare better than the lawfully admitted temporary visitor who had committed no fraud and actually was entitled to quota preference or exemption, but could achieve permanent status only as a matter of discretion. See § 245, 8 U.S.C. 1255. That cannot have been the intended effect of Section 241(f). As the Court of Appeals for the Second Circuit concluded in the companion *Scott* case (350 F. 2d at 283), such a construction would "invite frustration and wholesale evasion of the quota system."

Any suggestion that Congress wished to reward quota evaders is negated in the very 1961 legislation which codified Section 241(f) in its present form. Section 10 of the Act of September 26, 1961 (P. L. 87-301, 75 Stat. 654) amended Section 205(c) of the Immigration and Nationality Act, now recodified as Section 204(c), 8 U.S.C. (1964 ed., Supp. 1) 1154(c), which precludes the award of exempt or preferred status to an alien who had previously been accorded similar preference on the basis of a marriage con-

tracted for the purpose of evading the immigration laws. This amendment was proposed by the House Judiciary Committee with the explanation that the new provision was intended "to counteract the increasing number of fraudulent acquisitions of nonquota status through sham marriages between aliens and U.S. citizens". H. Rep. 1086, 87th Cong., 1st Sess., p. 36. In the House debate, the bill's sponsor, Representative Walter, stated that it was "designed to correct * * * abuses * * * by unscrupulous aliens who desire to obtain preferential status by restoring to fraudulent marriages". 107 Cong. Rec. 18284. It can hardly be urged that in another section of the 1961 Act Congress intended to reward the unscrupulous alien who had engaged in the same evasions.

5. The court of appeals thought that unless its interpretation of the statute were adopted Section 241 (f) would have no meaningful impact. This assumption is unfounded. We have already shown that the provision had limited objectives, pointing to the House Committee's observation that the legislation would benefit "mostly Mexican nationals" who had entered on the basis of misrepresentations and had established family ties here. We might stop there. But it may be helpful to outline some additional situations in which Section 241(f) would become operative, under our interpretation, for aliens who have the designated relatives in the United States.

a. To take the example mentioned by the House Committee, a Mexican national enters the United

States through misrepresenting his past activities, his family relationships, or his financial situation. As a native of a Western Hemisphere country he is not subject to quota restrictions. See Sec. 101(a)(27) (8 U.S.C. 1101(a)(27)). The deportability resulting from his misrepresentation may be waived, if there was no other ground of inadmissibility.

b. A lawful permanent resident of the United States returns from an absence in a nearby country and lies about the length, purpose and incidents of his stay, or about his citizenship status. As a returning resident he is not subject to the quota restrictions. See § 101(a)(27) (8 U.S.C. 1101(a)(27)). Because he is a returning resident, inadmissibility for lack of documents can be waived. § 211(b) (8 U.S.C. 1181 (b)). Upon the grant of such a waiver he becomes "otherwise admissible", and his deportability for misrepresentation is also waived. The Section 241(f) waiver was recognized under such circumstances in *Matter of Y—*, 8 I. & N. Dec. 143 (1959).

c. An alien resides in the United States for seven years and then conceals a debarring condition or misconduct upon return from a temporary absence abroad. The disqualification can be waived because of his prior residence in the United States. § 212(c) (8 U.S.C. 1182(c)). Upon the grant of such waiver he becomes "otherwise admissible" and his deportability for misrepresentations is excused. If he were not eligible for the Section 212(c) waiver, the infraction would have disqualified him from benefits under Section 241(f).

d. An entrant who has complied with applicable quota requirements lies about a past criminal record or prostitution. Inadmissibility for the past criminal record or prostitution can be waived under Section 212(h), 8 U.S.C. 1182(h). Upon the grant of such waiver, he becomes otherwise admissible and his deportability for misrepresentations is excused by Section 241(f).

e. An alien lies about matters which bear on his admissibility but do not make him inadmissible. *E.g.*, lies about Communist Party membership found to have been involuntary, or about a crime found not to involve moral turpitude.[20] Since he was otherwise admissible his deportability for misrepresentations is waived by Section 241(f).

To be sure, these examples do not include situations where the misrepresentation evaded quota restrictions. But this is precisely what was intended. Congress enacted Section 241(f) for a limited objective. The familiar rule that doubts concerning the interpretation of deportation laws must be resolved in favor of the alien (see R. 25, n. 3) did not authorize the court below to expand the language and purpose of the statute beyond the limits clearly fixed, and to grant to aliens, on the basis of their fraud, benefits to which they would not have been entitled had they

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[20] The examples described in paragraph *e* are those suggested by the court in *Scott* and by the Board in *Matter of Slade*, 10 I. & N. Dec. 128, 133. Their relevance was disputed by the court below. R. 23-24, n. 1.

acted honestly. The rule of strict construction "cannot provide a substitute for common sense, precedent, and legislative history." *United States* v. *Standard Oil Co.*, 384 U.S. 224, 225. The deportation order against respondent thus was properly entered.[21]

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[21] We note, however, the possibility that respondent may have become eligible to apply for discretionary benefits which, if granted, would avert deportation. Having been inspected and admitted at the time of his entry he would be eligible to apply for adjustment of status under Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255. The change in quota priorities effected by the 1965 amendments would enable him to qualify for fifth preference status as the brother of an American citizen, since it appears that at least one of his sisters has been naturalized. If his parents have also been naturalized he would be eligible for fourth preference status. See Section 203(a)(4) and (5), Immigration and Nationality Act, as amended, 8 U.S.C. (1964 ed., Supp. 1) 1153(a)(4) and (5). While Section 245 requires that a visa must be available, changes in the quota picture resulting from the 1965 amendments make it possible that a visa would become available in the near future to a person in most of the preference classes, although the fifth preference for Italy still entails a long wait. Since respondent will have completed seven years residence in the United States on October 17, 1966, he will then become eligible also to be considered for suspension of deportation under Section 244 of the Immigration and Nationality Act, as amended, 8 U.S.C. (1964 ed., Supp. 1) 1254. However, the achievement of the bare minimum of required residence through delays caused by litigation has been regarded unfavorably. See H. Rep. 1167, 89th Cong., 1st Sess. Moreover, we cannot say whether any such relief would be granted, since it is both discretionary and requires the submission of an application establishing eligibility and setting forth persuasive reasons for special treatment.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

LOUIS F. CLAIBORNE,
Assistant to the Solicitor General.

L. PAUL WININGS,
General Counsel,

CHARLES GORDON,
Deputy General Counsel,
Immigration and Naturalization Service.

August, 1966.

APPENDIX

1. Section 7, Act of September 11, 1957, P. L. 85-316, 71 Stat. 639, 640.

The provisions of section 241 of the Immigration and Nationality Act relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as (1) aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation, or (2) aliens who were not of the nationality specified in their visas, shall not apply to an alien otherwise admissible at the time of entry who (A) is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence; or (B) was admitted to the United States between December 22, 1945, and November 1, 1954, both dates inclusive, and misrepresented his nationality, place of birth, identity, or residence in applying for a visa: *Provided*, That such alien described in clause (B) shall establish to the satisfaction of the Attorney General that the misrepresentation was predicated upon the alien's fear of persecution because of race, religion, or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere. After the effective date of this Act, any alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to pro-

cure, or has procured, a visa or other documentation, or entry into the United States, by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, shall hereafter be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying for a visa and for admission to the United States.

2. Section 211, Immigration and Nationality Act, Act of June 27, 1952, P. L. 414, 66 Stat. 163.

(a) No immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such immigrant visa of the accompanying parent, (2) is properly chargeable to the quota specified in the immigrant visa, (3) is a nonquota immigrant if specified as such in the immigrant visa, (4) is of the proper status under the quota specified in the immigrant visa, and (5) is otherwise admissible under this Act.

(b) Notwithstanding the provisions of section 212(a)(20) of this Act, in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit of other documentation.

(c) The Attorney General may in his discretion, subject to subsection (d), admit to the

United States any otherwise admissible immigrant not admissible under clause (2), (3), or (4) of subsection (a), if satisfied that such inadmissibility was not known to and could not have been ascertained by the exercise of reasonable diligence by, such immigrant prior to the departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory, or, in the case of an immigrant coming from foreign contiguous territory, prior to the application of the immigrant for admission.

(d) No quota immigrant within clause (2) or (3) of subsection (a) shall be admitted under subsection (c) if the entire number of immigrant visas which may be issued to quota immigrants under the same quota for the fiscal year, or the next fiscal year, has already been issued. If such entire number of immigrant visas has not been issued, the Secretary of State, upon notification by the Attorney General of the admission under subsection (c) of a quota immigrant within clause (2) or (3) of subsection (a), shall reduce by one the number of immigrant visas which may be issued to quota immigrants under the same quota during the fiscal year in which such immigrant is admitted, or, if the entire number of immigrant visas which may be issued to quota immigrants under the same quota for the fiscal year has been issued, then during the next following fiscal year.

(e) Every alien making application for admission as an immigrant shall present a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General.

3. Section 211, Immigration and Nationality Act, 8 U.S.C. 1151, as amended by Section 9, Act of October 3, 1965, P. L. 89-236, 79 Stat. 911.

(a) Except as provided in subsection (b) no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General. With respect to immigrants to be admitted under quotas of quota areas prior to June 30, 1968, no immigrant visa shall be deemed valid unless the immigrant is properly chargeable to the quota area under the quota of which the visa is issued.

(b) Notwithstanding the provisions of section 212(a)(20) of this Act in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 101(a)(27)(B), who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 91

MURIEL MAY SCOTT, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The majority and minority opinions of the Court of Appeals are reported at 350 F. 2d 279 (R. 22–31).[1] The opinions of the special inquiry officer and the Board are not reported but are set forth at R. 4–19.

JURISDICTION

The judgment of the court of appeals was entered on July 14, 1965. On October 13, 1965, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to and including December 11, 1965. The petition for certiorari was filed on December 10, 1965 and was granted on March 21, 1966.

[1] "R" references are to the printed transcript of record.

231-092—66

The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

An alien who is deportable because he entered through fraudulent misrepresentations is excused from deportation on that account by Section 241(f) of the Immigration and Nationality Act, if he has close relatives in the United States and was "otherwise admissible at the time of entry." Relying upon a sham marriage, petitioner gained entry by representing herself as the wife of an American citizen, thus fraudulently attaining non-quota status and avoiding the quota restrictions which would have precluded her entry. A child was subsequently born out of wedlock to her in this country. The question is whether, as the parent of such a child, she is entitled to the waiver provided by Section 241(f), even though at the time of her entry she had not complied with the quota requirements of the statute, and could not have been lawfully admitted in accordance with her true status as a non-preference immigrant because the quota of her country was substantially oversubscribed.

STATUTES INVOLVED

The relevant statutes are set forth in Petitioner's brief in the companion case of *Immigration and Naturalization Service* v. *Errico*, No. 54, this Term.

STATEMENT

Petitioner is a native of Jamaica, now 30 years of age. She was admitted to the United States as a nonquota immigrant on August 6, 1958, upon the representation that she was the wife of an American citi-

zen. The alleged marriage was concededly a sham, undertaken solely to evade the quota restrictions of the immigration laws. Petitioner has admitted that she and her sister, Gloria Slade, agreed to pay $500 to one Goldbourne to make the necessary arrangements. Goldbourne brought one Lloyd to Jamaica, where he went through a marriage ceremony with petitioner under the name of Edward Lee Scott, an American citizen. Petitioner had not known Lloyd (alias Scott) before the marriage and has not seen him since. The marriage was never consummated, and the parties understood that the marriage was being performed solely to enable petitioner to obtain non-quota status. Since her arrival in the United States petitioner has given birth to a child out of wedlock. She has lived with her sister,[2] although in her visa application she represented that she was coming to the United States to live with her husband.[3] R. 5–8, 15.

When the fraud was discovered, deportation proceedings were commenced against petitioner. She was charged with having fraudulently obtained entry as a non-quota immigrant on the basis of a pretended marriage to an American citizen. R. 2–4. A hearing

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[2] The sister entered the United States on the basis of a similar sham marriage, also had a child born out of wedlock, and also is under order of deportation. *Matter of Slade*, 10 I. & N. Dec. 128 (1962). The sister also is challenging an order for her deportation, and her petition for judicial review (No. 29,600, C.A. 2) is being held in abeyance to await this Court's decision in the instant case.

[3] Service records indicate that petitioner has made no effort to terminate this sham marriage and has not remarried. See R. 20. It is also indicated that Mr. Scott apparently was already married. R. 9–10.

was held before a special inquiry officer who found petitioner deportable on the ground that she was not a non-quota immigrant as specified in the immigrant visa she presented at the time of her entry. The special inquiry officer directed that petitioner be granted the privilege of voluntary departure. However, he deemed her ineligible for correction of the improper non-quota allocation, under Section 211(c) of the statute, as it then read, because her fraud was deliberate. And he found her ineligible for waiver of deportability under Section 241(f). R. 4–13.

Petitioner appealed to the Board of Immigration Appeals, which on August 14, 1962 affirmed the deportation order. The Board considered the applicability of Section 241(f) and found petitioner ineligible for relief under that provision because she was not "otherwise admissible" at the time of her entry, since she was actually a quota immigrant and entered as a non-quota immigrant. R. 14–19.

A petition for judicial review was then filed in the United States Court of Appeals for the Second Circuit. R. 19–21. On July 14, 1965 that court affirmed the deportation order. The court agreed with the Board of Immigration Appeals that the participant in a sham marriage, contracted solely to circumvent the immigration laws, did not acquire non-quota benefits as the spouse of an American citizen. It likewise affirmed the ruling that petitioner did not qualify for the waiver of deportability under Section 241(f), Judge Smith dissenting. R. 22–31.

ARGUMENT

The arguments supporting the respondent's position in the instant case are fully canvassed in petitioner's brief in the companion case of *Immigration and Naturalization Service* v. *Errico,* No. 54, this Term. We respectfully refer the Court to that discussion, which it seems unnecessary to repeat. Our conclusion here, as there, is that Section 241(f) of the Immigration and Nationality Act was enacted for the limited purpose of waiving deportability resulting from the misrepresentation itself, and was not intended to excuse failure to comply with applicable quota restrictions.

Petitioner admittedly committed fraud in obtaining admission as the alleged wife of an American citizen. Her fraud enabled her to enter the United States as a non-quota immigrant, a status to which she was not entitled. As in *Errico* (Brief in No. 54, p. 31), petitioner resorted to this deception in order to bypass thousands of immigrants waiting to immigrate lawfully. As a non-preference immigrant from Jamaica petitioner could not have entered legally, since she would have had to await her turn on the waiting list of a quota that was substantially oversubscribed. Her unlawful entry, coupled with the birth of a child out of wedlock in the United States, did not give her an exemption from the quota she could not have attained lawfully.[4] Since she was

[4] At the time of her entry, petitioner was not the parent of a United States citizen. Even if she had then been the parent of a United States citizen she would have received no preference or exemption under the quota unless the child was

not "otherwise admissible" at the time of her entry, Section 241(f) did not waive deportation for the entry in violation of law. The deportation order against petitioner thus was properly entered.[5]

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at least 21 years of age. Section 203(a)(2), Immigration and Nationality Act, 66 Stat. 178. As amended in 1965, the statute exempts parents of United States citizens from quota restrictions as "immediate relatives", but again this exemption is limited to parents of children who are at least 21 years of age. Section 201 (a) and (b), Immigration and Nationality Act, as amended, 8 U.S.C., Supp. I, 1151 (a) and (b).

[5] Unlike *Errico*, petitioner in the instant case would not be eligible for adjustment of status under Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255, since the benefits of that section are withheld from natives of a Western Hemisphere country. However, as we point out in our *Errico* brief (p. 31, n. 16), Jamaica is now an independent country of the Western Hemisphere and as a native of that country petitioner would not be subject to quota restrictions if she now sought to enter, although, once deported, she would have to apply for permission to reapply for entry, a privilege frequently granted to deportees. Section 212(a)(17), Immigration and Nationality Act, 8 U.S.C. 1182(a)(17). Having completed seven years residence, petitioner could also apply for suspension of deportation under Section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254. However, as pointed out in our *Errico* brief (p. 37, n. 21), relief is discretionary and it is uncertain whether it would be granted to petitioner, if she applied.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

L. PAUL WINIGS,
General Counsel,

CHARLES GORDON,
Deputy General Counsel,
Immigration and Naturalization Service.

SEPTEMBER 1966.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 91

MURIEL MAY SCOTT, née PLUMMER,

Petitioner,

—against—

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

EDWARD Q. CARR, JR.
The Legal Aid Society
Counsel for Petitioner
11 Park Place
New York, N. Y. 10007

JULIUS C. BIERVLIET,
of Counsel

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BRIEF FOR PETITIONER

Opinions Below

The opinion of the United States Court of Appeals for the Second Circuit is reported at 350 F. 2d 279 and appears in the Record at R 22. The determination of the Special Inquiry Officer dated February 28, 1962, and of the Board of Immigration Appeals dated August 14, 1962, are found on pages R 4 and R 14 of the Record respectively.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The Writ of Certiorari to the United States Court of Appeals for the Second Circuit was granted on March 21, 1966 (383 U.S. 941).

Question Presented

Whether an alien who entered the United States as a non-quota immigrant by means of a fraudulent marriage to a United States citizen, who subsequently gave birth to a citizen child and who was otherwise admissible at the time of entry but for the fraud in avoiding quota requirements, is subject to the saving provisions of Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f) which prevents deportation.

Statutory Provision

Section 241(f), Immigration and Nationality Act; 8 U.S.C. 1251(f)

"The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is spouse, parent, or a child of a United States citizen

or of an alien lawfully admitted for permanent residence."

Statement

Petitioner, then a native of Jamaica, British West Indies, obtained admission to the United States in 1958, under a non-quota immigrant visa issued to her as the wife of Edward Lee Scott, a United States citizen. Four years later deportation proceedings were instituted against petitioner charging that she had entered into the marriage ceremony with Scott " . . . solely for the purpose of qualifying for a non-quota immigrant visa . . . without the intention of establishing a bona fide marital relationship with him" and had not in fact subsequently established such a relationship with him.

Such conduct is grounds for exclusion at entry under 8 U.S.C. 1182(a) (19), (which deals with visas procured by fraud or misrepresentation of material facts) and hence is grounds for deportation under 8 U.S.C. 1251(a) (1).

Insofar as is relevant to the case in its present posture, the sole defense to the deportation was that petitioner was relieved of the consequences of her fraud by virtue of her having given birth to and being the parent of a citizen of the United States. 75 Stat. 655 (1961), 8 U.S.C. 1251(f).

This statute exempts from the deportation provisions of 8 U.S.C. 1251 those persons who obtained visas and entry to the United States by fraud and misrepresentation provided that the alien is the spouse, parent, or child of a citizen of the United States and that the alien was "otherwise admissible," at the time of entry.

In the court below it was held that petitioner qualified for the exemption in all respects but one; she was not "otherwise admissible" because at the time of her entry the British sub-quota for Jamaica, British West Indies, was oversubscribed. (350 F. 2d 279).

This Court granted certiorari here and in *Immigration and Naturalization Service* v. *Errico,* No. 51 O.T. 1966 to resolve the conflicting interpretations given the "otherwise admissible" language of the statute; the Ninth Circuit having held in *Errico* that the exemption applicable to persons situated as is petitioner (349 F. 2d 541).

ARGUMENT

POINT I

The Purpose and Language of the Statute Negate the Possibility That "Otherwise Admissible" Was Intended to Encompass the Availability of Quota Status.

We need not search far to determine what Congress sought to accomplish by this legislation. It was a clear recognition that maintaining the integrity of the family unit was, as it always has been, a vital and paramount national policy. Even beyond the benefit to the alien is the likelihood, far from remote in this case, that expulsion of the alien will result in banishment of a citizen-child during the period of its minority.

With the exception of the fraud by which she obtained her nonquota immigrant visa, petitioner has qualified as a person "otherwise admissible" since she falls within none of the mental, physical, moral or political classes of aliens proscribed from receiving visas by 8 U.S.C. §1182(a).

However, the court below, at the government's urging, determined that even though petitioner met the so-called "qualitative" test, she was not "otherwise admissible" because at the time of entry she would not have been able to obtain a quota immigrant visa due to the oversubscription of the immigrant quota from Jamaica.

This interpretation can stand only if we are prepared to attribute to Congress the intention of passing a law, widely heralded as humanitarian, which affects almost no one and which is inconsistent with other laws contemporaneously passed.

A. Contemporaneous Legislation

The first part of Section 7 of the 1957 Act (71 Stat. 639), carried forward by Section 16 of the Act of September 26, 1961 (75 Stat. 650, 655) and appearing in 8 U.S.C. §1251(f) deals with affording aliens relief from expulsion. The second sentence of Section 7 of the 1957 Act, carried forward as Section 15 of the 1961 Act and appearing in 8 U.S.C. §1182(i) deals with providing relief from *exclusion* for the non-resident alien with the same familial status to citizens as petitioner. The latter statute provides:

> ". . . any alien who is the spouse, parent or child of a United States citizen . . . and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry into the United States, by fraud or misrepresentation or (2) he admits the commission of perjury in connection therewith, shall . . . be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or re-

applying for a visa and for admission to the United States."

This section, using the same "otherwise admissible" language as the statute now before the Court for construction clearly does not contemplate the availability of a quota place since the familial relationship which is the factor which gives rise to the exemption from excludability also confers nonquota or preferred quota status upon the alien. 8 U.S.C. 1101(a)(27)(A, B); 8 U.S.C. 1153(a)(2).

To attribute to Congress the intention of incorporating the quota system into the familial exemption from expulsion would mean that a more favorable exemption is granted to aliens outside the United States who are merely seeking to re-establish a family tie which has already been broken, while a less favorable exemption is given to the resident alien in an existing family unit. It is inconceivable that the same "otherwise admissible" language should, in successive sentences of the 1957 Act, promote the national policy of uniting a nonresident alien with his American family and yet require the breakup or emigration of the American family of a resident alien. It is all the more illogical to believe that Congress intended to compel expulsion without leaving any discretion to the Attorney General to exempt certain individuals, a discretion given in the exclusion statute (8 U.S.C. §1182(i)).

It is true that the construction which we place upon the two statutes which stand in pari materia gives broader rights of residence to the resident alien than to the nonresident alien—i.e., the Attorney General's discretion is not involved in the former situation. But the only alternative which the Government offers gives an even broader right to residence for the nonresident alien.

B. Legislative History

No clear reference to the meaning of the words "otherwise admissible" appears in any of the records or reports accompanying the 1957 Act.

General references to the effect that the entire sixteen sections of the Act did not change the quota system were twice made by Senator Eastland during the course of the Senate debates (103 Cong. Rec. 15487, 89 [Aug. 21, 1957]) and also by Representatives Celler and Chelf in the House of Representatives (103 Cong. Rec. 16300, 16305-06 [Aug. 28, 1957]). On the other hand general references to the effect that Section 7 was designed to relieve hardship conditions were made by the then Senators Kennedy and Johnson, and Senator Eastland (103 Cong. Rec. 15497, 15498 and 15487, respectively).

The general tenor of all the references to the 1957 Act in the House Report (No. 1199, 85th Cong., 1st Session):

> ". . . indicates that the Congress intended to provide for a liberal treatment of children and was concerned with keeping families of United States citizens and immigrants united." (at p. 7)

Later in the House Committee report, at pp. 10-11, it is stated that the exemption provisions of Section 7 include

> ". . . the spouses [sic], parents and children of United States citizens or lawfully resident aliens . . . who may have misrepresented their place of birth, nationality, immigrant status and the like if their exclusion would work extreme hardship on their families. In respect to expulsion of aliens who are the spouses, parents, or children of United States citizens or law-

> fully resident aliens, and who are already in the United States, misrepresentation in obtaining documentation or entry would not be a ground for deportation if the aliens were otherwise admissible at the time of entry."

The Report also states that in the past, "considering the family situation" had resulted in the enactment of a number of private relief bills, but that the "more humanitarian approach" required the extension of relief to an entire defined class of aliens rather than the selected group of individuals who had reached members of Congress for special relief.

The belief was also stated in this report, at p. 11, that most resident aliens falling into the latter category were Mexican nationals. The fact that the largest single group which might benefit by the exemption came from Mexico, a non-quota country, does not in any way indicate that non-quota aliens were the only group intended to be reached by the statute.

C. The Effects of the Statute

In the court of appeals it was held that petitioner's interpretation of the familial exemption for fraud " . . . is likely to invite frustration and wholesale evasion of the quota system . . . " This ominous prediction of the effects of relieving petitioner of her fraud is unwarranted. First it assumes wholesale, undiscovered fraudulent misrepresentations such as were made by petitioner; then it further assumes that the immigrant intended, at the time of the fraudulent entry, to subsequently change her familial status in such a way as to acquire a citizen spouse or child. Such an hypothesis is just too far-fetched to have

any meaning. We hardly think that petitioner at the time of her fraudulent entry planned to bear a citizen-child or that she anticipated that such planned parenthood would relieve her of her fraud.*

The Government's interpretation of what effect was intended deprives the statute of any effect except under some rather contrived and artificial situations.

In the court below the government contended and the Court held that the "otherwise admissible" language included both qualitative admissibility and the availability of a quota place at the time of entry. The effect of this interpretation is to relieve of the fraud or material misrepresentation only those aliens who never had to perpetrate the fraud to gain admission. We find it hard to believe that an alien would lie when the truth would be no bar to admission or that such misrepresentation or fraud if committed would be material.**

Nor do we see how Section 241(f) of the Immigration Act can now continue to operate with any real vitality in light of the Immigration Act of 1965 (Public Law 89-236; 79 Stat. 911) which sets a quarterly world-wide ceiling of 45,000 quota immigrants for the first three-quarters of any fiscal year. Thus any person who enters in a particular quarter of the year in which this world-wide ceiling is filled would under the government's interpretation not be

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* Of course the exemption statute did not exist at the time of petitioner's entry; but even if it did it would take a rather sophisticated alien to be aware of it and plan accordingly.

** In this context it should be noted that the fraud or misrepresentation in order to be an excludable or deportable offense must be *material*. We have difficulty in seeing how a misrepresentation or fraud could be material if the alien would have been admitted if he told the truth.

"otherwise admissible" even though his country's quota was not used up. However, if the alien waits until the fourth-quarter of any year after fiscal 1965 then he may be admissible because of the pooling arrangement of unused national quctas under the 1965 Act (8 U.S.C. §1151(d)).

In short, the Government's interpretation renders the exemption provision either virtually meaningless or effective only according to a sliding scale of arbitrary values which bares no relationship to Congress' concern for maintaining existing family units.

The interpretation which petitioner places upon the "otherwise admissible" language will effect the obvious and salutary desire of holding together existing families and poses no realistic threat of impairing the effectiveness of past or present quota restrictions. While we cannot hazard a guess as to the numbers affected under petitioner's interpretation, certainly it is not an amount sufficient to undermine our quota system.

Summary

Only by giving the statute the permissible construction of including only qualitative standards of admissibility can this Court give any real meaning to its provisions. Such a construction is not only consistent with the language used but is compelling if the specific provision is viewed together with related acts and the overriding national policy and congressional purpose of maintaining the existing resident family status of United States citizens. The inroads which this interpretation makes upon the

quota system is either negligible or illusory since the familial exemption claimed has traditionally been an integral part of our immigration policy.

Conclusion

The judgment of the Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

EDWARD Q. CARR, JR.
THE LEGAL AID SOCIETY
Counsel for Petitioner

JULIUS C. BIERVLIET
LEON B. POLSKY
of Counsel

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 54

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioner,

v.

GIUSEPPE ERRICO,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE RESPONDENT

EDWIN J. PETERSON,
801 Standard Plaza,
Portland, Oregon,
Counsel for Respondent.
FRANK IERULLI,
Commonwealth Building,
Portland, Oregon,
GERALD H. ROBINSON,
1400 Standard Plaza,
Portland, Oregon,
Of Counsel for Respondent.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 9-66

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IMMIGRATION AND NATURALIZATION SERVICE,

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On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE RESPONDENT

Respondent agrees with the petitioner's statement relative to the opinions below, jurisdiction, statutes involved, question presented, and statement of the case.

ARGUMENT

The government attacks the opinion and conclusion of the Court of Appeals on three grounds:

1. That the language of the statute, Section 241 (f) has been misunderstood.

2. That the legislative history of the statute reflects a more limited purpose than that perceived by the Court of Appeals, and

3. That the interpretation of Section 241 (f) by the Court of Appeals conflicts with other statutory provisions covering similar statutes.

On the other hand, the government asserts that in order to qualify under Section 241 (f), the alien must meet quota requirements for otherwise he would be able to circumvent the national quota system in the immigration law.

I

The Language of the Statute

Section 241 (f) provides as follows:

> "The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens *who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation* shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence." (Emphasis added)

The Court of Appeals held that "under its plain terms, the Section purports to grant absolute relief to aliens who have close familial ties in the United States and who have gained entry into the United States through 'fraud or misrepresentation' ".

There is not a word in one statute that this relief is based upon the ability of the alien to meet quota requirements, or that the relief is intended to encompass only those misrepresentations or frauds which may be waived by the Attorney General under some other section of the law.

Such limitations could easily have been included in the language of Section 241 (f) had the Congress deemed it desirable. Indeed, the language used in the statute is quite clearly intended to eliminate the discretionary powers of the Attorney General which had existed in Section 7 of the act of September 11, 1957 (P.L. 85-316, 71 Stat. 640). Furthermore, weight must be given to Judge Duniway's concurring opinion (Tr. 25) in which he reads Section 241 (f) in *"pari materia"* with Section 211 (a) under which *Errico* is sought to be deported. Section 211 (a) sets forth five qualifications for admission to the United States. They are as follows:

> "(1) . . . a valid unexpired immigrant visa . . .,
>
> (2) is properly chargeable to the quota specified in the immigrant visa,
>
> (3) is a non-quota immigrant if specified as such in the immigrant visa,
>
> (4) is of the proper status under the quota specified in the immigrant visa, and
>
> (5) is *otherwise admissible* under this chapter." (Emphasis added)

Judge Duniway noted that the phrase "otherwise admissible" as used in Section 211 (a) refers to matters other than quota status and he concluded that it was

reasonable that the same phrase in Section 241 (f) also refers to disqualifications other than those relating to the quota.

II

Legislative History

The government's brief relates the transition of relief from deportation on account of misrepresentations in gaining admission from a rigid ban, to discretionary relief by the Attorney General to the absolute statutory relief granted in Section 241 (f). Brief 17-22.

This discussion only reinforces the conclusion of the Court of Appeals:

> "In the light of the long course of legislative history indicating a congressional intent to [fol. 22] apply "fair humanitarian standards", it is not reasonable to believe that Congress, by its enactments and reenactments in 1961, intended thereby to deny relief under the repealed Section 7 to an alien who had gained entry by misrepresenting his nationality, place of birth, identity, or residence and at the same time expressly provide for relief to three specific classes of aliens, those convicted of a crime involving moral turpitude, those engaged in the traffic of prostitution, and those who were ex-convicts upon whom at least five years of confinement had been actually imposed." (Tr. 22)

The government's argument that Congress would not grant absolute relief to those who misrepresent facts to obtain a visa while allowing only discretionary relief to those classes of aliens who were guilty of misconduct is only to say that the Immigration and Nationality Act

has become a patchwork of amendments and modifications which are in some major respects inconsistent. This situation has developed because of practical necessities as they have collided with the original law which was both harsh and rigid. Finally, the contention of the government that Judge Duniway interpretation of Section 241 (f) overlooks its legislative background, and the statements of Senator Eastland that the 1957 amendments do not modify the national origins quota system is not actually appropriate because the relief authorized under Section 241 (f) in a relatively few cases cannot truly be said to be a modification of the entire quota system. In any event, the Congress has subsequently drastically changed the quota system which will be eliminated entirely in the very near future, without touching in any way Section 241 (f). Thus, the government's attempt to require an alien to qualify under a quota before he can receive relief under Section 241 (f) will be a thing of the past when the quota system is abolished.

The government's contention that the term "otherwise admissible" is not used in the same sense in Section 241 (f) as in Section 211 (a) as allowed by Judge Duniway, is based upon the use of this phrase in Section 212 (f) (g) (h) which are opportunities for discretionary relief for persons afflicted with tuberculosis or mental defects, or for criminals and prostitutes, and the persons who have sought to procure a visa by misrepresentation. Those provisions in Section 212 are related to exclusion of aliens rather than their deportation and it is not unreasonable to expect that Congress might use

one test for relief from exclusion and another test in cases of deportation.

III

Application of Section 241 (f)

The Court of Appeals concluded that if the government's quota argument prevailed, Section 241 (f) would have little or no meaning. The examples cited in the government's briefs pages 34 through 36 substantiate that position and as the government candidly admits "these examples do not include situations where misrepresentation evaded quota restrictions" (Br. 36). These include hypothetical situations which involve misrepresensations about matters which in the case of a Western Hemisphere alien would not have disqualified him for a visa, and in other situations in which the waiver is of certain misconduct rather than misrepresentation. It is interesting that the government can give no example in which Section 241 (f) can be applied to an alien who has used material misrepresentation to obtain a visa under the quota, except an unlikely situation of a criminal or a prostitute obtaining the even more unlikely waiver by the Attorney General.

The Court of Appeals clearly discerned that the government's position would lead to the conclusion that Section 241 (f) could never be operative unless the alien, while entitled to a visa of unquestionable validity had nevertheless procured another by fraud or misrepresentation upon which to base his admission (Tr. 23).

The real application of Section 241 (f) is in the situation, not governed by any other section of the Immigra-

tion and Nationality Act, where an alien who has procured a visa by fraud or misrepresentation, has resided in the United States and established intimate familial relationships with citizens of the United States. This is precisely the situation of *Errico* and the result—deportation—which the government seeks to impose on *Errico* is, in a sense, the fullest repudiation of its legal argument, for nowhere in the law is there any relief available to *Errico* except that provided by Section 241 (f).

The argument propounded by the government that the Ninth Court of Appeals decision, if allowed to stand, would lead to the wholesale evasion of the Immigration Act and the quota system carries little weight now that the quota system is on its way to oblivion and where the government officials who process visa applications can minimize the results of fraud or misrepresentation by exercising greater care and more scrutiny of applications.

CONCLUSION

For the above reasons it is submitted that the opinion of the Court of Appeals was correct, and its judgment should be affirmed.

Respectfully submitted,

EDWIN J. PETERSON
Attorney for Respondent
FRANK M. IERULLI
GERALD H. ROBINSON
Of Counsel for Respondent

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SUPREME COURT OF THE UNITED STATES

Nos. 54 AND 91.—OCTOBER TERM, 1966.

Immigration and Naturalization Service, Petitioner, v. Giuseppe Errico.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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Muriel May Scott, nee Plummer, Petitioner, v. Immigration and Naturalization Service.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.
91	

[December 12, 1966.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

We granted certiorari in these cases to resolve a conflict between the Second and Ninth Circuits on their interpretations of § 241 (f) of the Immigration and Nationality Act.[1] The issue is identical in both cases and, therefore, lends itself to a single opinion.

Section 241 (f) reads as follows:

> "The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence."

[1] 71 Stat. 640-641 (1957), as amended, 75 Stat. 655-656 (1961), 8 U. S. C. § 1251 (f).

The issue is whether the statute saves from deportation an alien who misrepresents his status for the purpose of evading quota restrictions, if he has the necessary familian relationship to a United States citizen or lawful permanent resident.

Respondent Errico in No. 54, a native of Italy, falsely represented to the immigation authorities that he was a skilled mechanic with specialized experience in repairing foreign automobiles. On the basis of that misrepresentation he was granted first preference quota status under the statutory preference scheme then in effect, and entered the United States in 1959 with his wife. A child was born to the couple in 1960 and acquired United States citizenship at birth. In 1963 deportation proceedings were commenced against Errico on the ground that he was excludable at the time of entry as not "of the proper status under the quota specified in the immigrant visa."[2] Throughout the proceedings Errico insisted that he was saved from deportation by § 241 (f). The special inquiry officer of the Immigration and Naturalization Service ruled that relief under § 241 (f) was not available because Errico had not complied with quota requirements and, hence, was not "otherwise admissible at the time of entry." The Board of Immigration Appeals affirmed the deportation order but the Court of Appeals for the Ninth Circuit reversed, holding that the construction of the statute adopted by the Board would strip it of practically all meaning, since a material misrepresentation would presumably be given to conceal some factor that would bear on admissibility. 349 F. 2d 541. We granted certiorari. 383 U. S. 941.

[2] Section 211 (a)(4) of the Immigration and Nationality Act, 66 Stat. 181 (1952), as amended, 79 Stat. 917 (1965), 8 U. S. C. § 1181 (a) (Supp. I, 1965). Aliens who were excludable at the time of entry under the law then existing are deportable under § 241 (a)(1), 66 Stat. 204 (1952), as amended, 8 U. S. C. § 1251 (a)(1).

Petitioner Scott in No. 91, a native of Jamaica, contracted a marriage with a United States citizen by proxy solely for the purpose of obtaining nonquota status for entry into the country. She has never lived with her husband and never intended to do so. After entering the United States in 1958, she gave birth to an illegitimate child, who became an American citizen at birth. When the fraud was discovered, deportation proceedings were begun, and a special inquiry officer of the Immigration and Naturalization Service found her deportable on the ground that she was not a nonquota immigrant as specified in her visa.[3] The Board of Immigration Appeals affirmed, and the Court of Appeals for the Second Circuit affirmed the Board. 350 F. 2d 279. The court agreed with the Board of Immigration Appeals that a sham marriage contracted solely to circumvent the immigration laws would not confer nonquota status on an alien as the spouse of an American citizen. It also affirmed the ruling that Mrs. Scott was not entitled to relief under § 241 (f) because she was not otherwise admissible at the time of entry, since her country's quota was oversubscribed. We granted certiorari. 383 U. S. 941.

At the outset it should be noted that even the Government agrees that § 241 (f) cannot be applied with strict literalness. Literally, § 241 (f) applies only when the alien is charged with entering in violation of § 212 (a)(19) of the statute, which excludes from entry "any alien who . . . has procured a visa or other documentation . . . by fraud, or by willfully misrepresenting a material fact."[4] Under this interpretation, an alien who entered by fraud could be deported for having entered with a defective visa or for other documentary irregularities even if he would have been admissible if he had

[3] Section 211 (a)(3), 66 Stat. 181 (1952), as amended, 79 Stat. 917 (1965), 8 U. S. C. § 1181 (a) (Supp. I, 1965).

[4] 66 Stat. 183 (1952), as amended, 8 U. S. C. § 1182 (a)(19).

not committed the fraud. The Government concedes that such an interpretation would be inconsistent with the manifest purpose of the section, and the administrative authorities have consistently held that § 241 (f) waives any deportation charge that results directly from the misrepresentation regardless of the section of the statute under which the charge was brought, provided that the alien was "otherwise admissible at the time of entry." [5] The Government's argument in both cases is that to be otherwise admissible at the time of entry the alien must show that he would have been admitted even if he had not lied, and that the aliens in these cases would not have been admitted because of the quota restrictions. It is the argument of the aliens that our adoption of the government thesis would negate the intention of Congress to apply fair humanitarian standards in granting relief from the consequences of their fraud to aliens who are close relatives of United States citizens, and that the statute would have practically no effect if construed as the Government argues, since it requires a considerable stretch of the imagination to conceive of an alien making a material misrepresentation that did not conceal some factor that would make him inadmissible.

The sharp divergence of opinion among the circuit judges in these cases indicates that the meaning of the words "otherwise admissible" is not obvious. An interpretation of these words requires close attention to the language of § 241 (f), to the language of its predecessor, § 7 of the 1957 Act, and to the legislative history of these provisions.

The legislative history begins with the enactment of the Displaced Persons Act of 1948, 62 Stat. 1009. This Act provided for the admission to the United States of

[5] See Matter of S—, 7 I. & N. Dec. 715 (1958); Matter of Y—, 8 I. & N. Dec. 143 (1959).

thousands of war refugees, many from countries that had fallen behind the Iron Curtain. Some of these refugees misrepresented their nationality or homeland while in Europe to avoid being repatriated to a Communist country. In so doing, however, they fell afoul of § 10 of the Act, which provided that persons making willful misrepresentations for the purpose of gaining admission "shall thereafter not be admissible into the United States." The plight of these refugees, who were excluded from the United States for misrepresentations that were generally felt to be justifiable, inspired recurring proposals for statutory reform. When the Act was revised and codified in 1952, the House Committee recommended adding a provision to save such refugees from deportation when they had misrepresented their nationality or homeland only to avoid repatriation and persecution.[4] The Conference Committee deleted the provision, but announced its sympathy with the refugees in the following terms:

> "It is also the opinion of the conferees that the sections of the bill which provide for the exclusion of aliens who obtained travel documents by fraud or by willfully misrepresenting a material fact, should not serve to exclude or to deport certain bona fide refugees who in fear of being forcibly repatriated to their former homelands misrepresented their place of birth when applying for a visa and such misrepresentation did not have as its basis the desire to evade the quota provisions of the law or an investigation in the place of their former residence. The conferees wish to emphasize that in applying fair humanitarian standards in the administrative adjudication of such cases, every effort is to be made to prevent the evasion of law by fraud and to protect the interest of the United States." H. R. Rep. No. 2096, 82d Cong., 2d Sess., p. 128 (1952).

[4] See H. R. Rep. No. 1365, 82d Cong., 2d Sess., p. 128 (1952).

The Immigration and Naturalization Service and the Attorney General did not construe the statute as the Conference Committee had recommended, believing that the explicit statutory language did not allow for an exemption for justifiable misrepresentations. Refugees who misrepresented their place of origin were always found to have concealed a material fact, since the misrepresentation hindered an investigation of their background.[7]

The misrepresentation section was not the only provision of the 1952 legislation that was widely thought to be unnecessarily harsh and restrictive, and in 1957 Congress passed legislation alleviating in many respects the stricter provisions of the earlier legislation. The purpose of the 1957 Act[8] is perfectly clear from its terms, as well as from the relevant House and Senate Committee Reports.[9] The most important provisions of the Act provide for special nonquota status for the adopted children or illegitimate children of immigrant parents, and for orphans who have been or are to be adopted by United States citizens. Other important provisions allow the Attorney General to waive certain grounds for exclusion or deportation, including affliction with tuberculosis or conviction of a crime involving moral turpitude, on behalf of aliens who are near relatives of United States citizens or of aliens lawfully admitted for permanent residence. The intent of the Act is plainly to grant exceptions to the rigorous provisions of the 1952

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[7] See matter of B— and P—, 2 I. & N. Dec. 638 (1947); H. R. Rep. No. 1199, 85th Cong., 1st Sess., p. 10 (1957).

[8] P. L. 85-316, 71 Stat. 639 (1957).

[9] "The legislative history of the Immigration and Nationality Act clearly indicates that the Congress intended to provide for a liberal treatment of children and was concerned with the problem of keeping families of United States citizens and immigrants united." H. R. Rep. No. 1199, 85th Cong., 1st Sess., p. 7 (1957). See also S. Rep. No. 1057, 85th Cong., 1st Sess. (1957).

Act for the purpose of keeping family units together. Congress felt that, in many circumstances, it was more important to unite families and preserve family ties than it was to enforce strictly the quota limitations or even the many restrictive sections that are designed to keep undesirable or harmful aliens out of the country.[10]

In this context it is not surprising that Congress also granted relief to aliens facing exclusion or deportation because they had gained entry through misrepresentation. Section 7 of the 1957 Act provided that:

"The provisions of section 241 of the Immigration and Nationality Act relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as (1) aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation, or (2) aliens who were not of the nationality specified in their visas, shall not apply to an alien otherwise admissible at the time of entry who (A) is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence; or (B) was admitted to the United States between December 22, 1945, and November 1, 1954, both dates inclusive, and misrepresented his nationality, place of birth, identity, or residence in apply-

[10] It is in this context that the legislative history cited in the dissent should be understood. The remarks of Senator Eastland and Congressman Celler quoted in footnote 4 of the dissent in context do not refer to § 7 of the Act but to the provisions of the bill providing for the adoption of alien orphans. Furthermore, Senator Eastland and Congressman Celler did not mean that no exceptions to the quota requirements were intended to be created, because the basic purpose of the bill was to relax the quota system for adopted children and for certain other classes of aliens deemed deserving of relief. They were reassuring their colleagues that no fundamental changes in the quota system were contemplated.

ing for a visa: *Provided*, That such alien described in clause (B) shall establish to the satisfaction of the Attorney General that the misrepresentation was predicated upon the alien's fear of persecution because of race, religion, or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere. After the effective date of this Act, any alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry into the United States, by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, shall hereafter be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying for a visa and for admission to the United States."

This section waived deportation under certain circumstances for two classes of aliens who had entered by fraud or misrepresentation. First, an alien who was "the spouse, parent, or a child of a United States citizen . . ." was saved from deportation for his fraud if he was "otherwise admissible at the time of entry." Second, an alien who entered during the postwar period and misrepresented his nationality, place of birth, identity, or residence was saved from deportation if he was "otherwise admissible at the time of entry" *and* if he could

"establish to the satisfaction of the Attorney General that the misrepresentation was predicated upon

the alien's fear of persecution because of race, religion or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere."

This language would be meaningless if an alien who committed fraud for the purpose of evading quota restrictions would be deportable as not "otherwise admissible at the time of entry." Congress must have felt that aliens who evaded quota restrictions by fraud would be "otherwise admissible at the time of entry" or it would not have found it necessary to provide further that, in the case of an alien *not* possessing a close familial relationship to a United States citizen or lawful permanent resident, the fraud must not be for the purpose of evading quota restrictions.

This conclusion is reinforced by the fact that Congress further specified that the aliens who were not close relatives of United States citizens must establish that their fraud was not committed for the purpose of evading an investigation. Fraud for the purpose of evading an investigation, if forgiven by the statute, would clearly leave the alien "otherwise admissible" if there were no other disqualifying factor. Elementary principles of statutory construction lead to the conclusion that Congress meant to specify two specific types of fraud that would leave an alien "otherwise admissible" but that would nonetheless bar relief to those aliens who could not claim close relationship with a United States citizen or alien lawfully admitted for permanent residence.

The present § 241 (f) is merely a codification of § 7 of the 1957 Act. The legislative history leaves no doubt that no substantive chance in the section was in-

tended.[11] The provision dealing with aliens who had entered the United States between 1945 and 1954, and had misrepresented their nationality for fear of persecution or repatriation, was omitted because it had accomplished its purpose; the rest of the section was retained intact.[12] It could hardly be argued that Congress intended to change the construction of the statute by this codification.

The intent of § 7 of the 1957 Act not to require that aliens who are close relatives of United States citizens have complied with quota restrictions to escape deportation for their fraud is clear from its language, and there is nothing in the legislative history to suggest that Congress had in mind a contrary result. The only specific reference to the part of § 7 that deals with close relatives of United States citizens or residents is in the House Committee Report, and it says only that most of the persons eligible for relief would be

> "Mexican nationals who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States, establish a family in this country, and were subsequently found to reside in the United States illegally." H. R. Rep. No. 1199, 85th Cong., 1st Sess., p. 11.

Without doubt most of the aliens who had obtained entry into the United States by illegal means were Mexicans, because it has always been far easier to avoid border restrictions when entering from Mexico than when entering from countries that do not have a common land border with the United States. There is nothing in the Committee Report to indicate that relief under the section was intended to be restricted to Mexicans, however.

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[11] H. R. Rep. No. 1086, 87th Cong., 1st Sess., p. 37 (1961). See also 107 Cong. Rec. 19653–19654 (1961) (remarks of Senator Eastland).

[12] H. R. Rep. No. 1086, 87th Cong., 1st Sess., p. 37 (1961).

Neither does it follow that, because Mexicans are not subject to quota restrictions, therefore, nationals of countries that do have a quota must be within the quota to obtain relief.

The construction of the statute that we adopt in these cases is further reinforced when the section is regarded in the context of the 1957 Act. The fundamental purpose of this legislation was to unite families. Refugees from Communist lands were also benefited, but the Act principally granted relief to persons who would be temporarily or permanently separated from their nearest relatives if the strict requirements of the Immigration and Nationality Act, including the national quotas, were not relaxed for them. It was wholly consistent with this purpose for Congress to provide that Immigrants who gained admission by misrepresentation, perhaps many years ago, should not be deported because their country's quota was oversubscribed when they entered if the effect of deportation would be to separate a family composed in part of American citizens or lawful permanent residents.

Even if there were some doubt as to the correct construction of the statute, the doubt should be resolved in favor of the alien. As this Court has held, even where a punitive section is being construed:

> "We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile. *Delgadillo* v. *Carmichael*, 332 U. S. 388. It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the nar-

rowest of several possible meanings of the words used." *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10. See also *Barber* v. *Gonzales*, 347 U. S. 637, 642–643.

The 1957 Act was not a punitive statute, and § 7 of that Act, now codified as § 241 (f), in particular was designed to accomplish a humanitarian result. We conclude that to give meaning to the statute in the light of its humanitarian purpose of preventing the breaking up of families composed in part at least of American citizens, the conflict between the circuits must be resolved in favor of the aliens, and that the *Errico* decision must be affirmed and the *Scott* decision reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 54 and 91.—October Term, 1966.

Immigration and Naturalization Service, Petitioner, v. Giuseppe Errico.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Muriel May Scott, nee Plummer, Petitioner, v. Immigration and Naturalization Service.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December 12, 1966.]

Mr. Justice Stewart, with whom Mr. Justice Harlan and Mr. Justice White join, dissenting.

The facts in one of these cases (No. 91) vividly illustrate the effect of the Court's interpretation of § 241 (f) of the Immigration and Nationality Act. The petitioner, a resident of Jamaica, paid for a sham marriage with an American citizen. A ceremony was held, but the petitioner and her "husband" parted immediately and have not seen each other since. However, the pretended marriage served its purpose; the petitioner was admitted into this country as a nonquota immigrant upon her false representation that she was the wife of a United States citizen. After this fraudulent entry she managed to become the actual parent of a United States citizen by conceiving and bearing an illegitimate child here.

The Court holds that this unsavory series of events gives the petitioner an unqualified right under § 241 (f) to remain in this country ahead of all the honest people waiting in Jamaica and elsewhere to gain lawful entry.[1]

[1] When "Mrs. Scott" made her fraudulent entry in 1958, Jamaica had an annual quota of 100 immigrants and a waiting list of 21,759 hopeful applicants. The corresponding figures for Italy in 1959, the year of Mr. Errico's entry, were 5,666 and 162,612.

I can find no support in the statute for such an odd and inequitable result.

Section 241 (f) provides as follows:

> "The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence."

It seems clear to me, for two separate and independently sufficient reasons, that this statute does not operate to bar the deportation of the aliens in the cases now before us. In the first place, § 241 (f) has application only to the deportation provisions which are based upon fraudulent entry, and the aliens in these two cases were not ordered to be deported under those provisions. Secondly, even if it were generally applicable, § 241 (f) does not cover the aliens involved in these two cases, because neither of them was "otherwise admissible" at the time of entry.

I.

Section 241 (f) by its terms neutralizes only those "provisions . . . relating to the deportation of aliens within the United States on the ground that they . . . sought to procure . . . entry into the United States by fraud or misrepresentation . . . ." Although the aliens in these two cases could have been deported under those "provisions," the deportation proceedings in both cases were in fact brought on grounds unrelated to their procurement of fraudulent visas. Both aliens were ordered

to be deported, not because of their fraud, but because they were not properly within their countries' quotas.

The plain terms of § 241 (f), therefore, do not even potentially apply to these aliens.[2] To hold that § 241 (f) is relevant to these cases is tantamount to holding that it is applicable to bar deportation based on any ground at all so long as the alien lied about that ground at the time of his unlawful entry.[3] I think nothing could be further from the statutory language or the congressional purpose.

II.

But even if § 241 (f) were generally applicable, these aliens could not claim its benefits because they were not within their respective national immigration quotas and therefore were not "otherwise admissible" at the time they entered the United States. That is the clear import of the statutory qualification, if its words are to be taken at their face value. That, too, has been the uniform and consistent administrative construction of the statute.

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[2] The Court states that the Government "concedes" and that "administrative authorities have consistently held that § 241 (f) waives any deportation charge that results directly from the misrepresentation." *Supra, at* p. —. But this concession and administrative practice fall far short of covering these cases. For here the grounds for deportation did not "[result] directly from the misrepresentation." They antedated and were the reason for the misrepresentation. The "administrative authorities" cited by the Court turned upon this distinction. In *Matter of Y*, 8 I. & N. Dec. 143 (1959), for example, the Board of Immigration Appeals broadened § 241 (f) enough to cover fraud-related administrative procedural defects in the alien's entry. It is this construction of § 241 (f) which the Government concedes, not the Court's construction which broadens the statute to excuse all disqualifications for entry.

[3] Thus, a Communist who had lied to the immigration authorities about his party membership at the time of entry could invoke § 241 (f) and remain in this country, while one who had told the truth, but was admitted by virtue of an administrative error, could be deported. See § 212 (a)(28), Immigration and Nationality Act.

See *Matter of D–O–*, 8 I. & N. Dec. 215 (1958); *Matter of Slade*, 10 I. & N. Dec. 128 (1962).

To except quota requirements of admissibility from the statutory qualification of "otherwise admissible" would undercut the elaborate quota system which was for years at the heart of the immigration laws. Yet the legislative history of the predecessor of § 241 (f), § 7 of the 1957 Act, makes clear that the limited relief given by the statute was to have no effect at all on the quota system.[4]

Moreover, the consistent use of the same qualifying phrase, "otherwise admissible" in other sections of the Immigration and Nationality Act makes clear that, as a term of art, it includes quota admissibility. The term typically follows a definition of grounds for admissibility or for exceptions to deportation, to insure that all the other relevant requirements of the Act are imposed upon the alien.[5]

Thus the plain meaning of the "otherwise admissible" qualification, as well as legislative policy and legislative history, all indicate that the term serves the same basic function in § 241 (f) as in other sections of the Act. Fraud is removed as a ground for deportation of those with the requisite family ties, and "otherwise admissible"

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[4] Senator Eastland, Chairman of the Committee which sponsored the 1957 amendments to the Immigration Act, stated, "the bill does not modify the national quota provisions." 103 Cong. Rec. 15487 (Aug. 21, 1957). See also 103 Cong. Rec. 16300 (Aug. 28, 1957) (remarks of Congressman Celler) "[The bill] makes no changes—no changes whatsoever, in the controversial issue of the national origins quota system."

P. L. 89–236, 79 Stat. 911, made substantial changes in the quota system. But that statute, passed in 1965, hardly indicates a congressional intent in 1957 or in 1961 (when the present statute was revised) to abandon quota requirements.

[5] See, *e. g.*, § 211 (a) and (b); "The War Brides Act," 59 Stat. 659.

insures the integrity of the remainder of the statutory scheme.[6]

The Court justifies its disregard of the plain meaning and consistent administrative construction of § 241 (f) by resort to the spirit of humanitarianism which is said to have moved Congress to enact the statute. No doubt Congress in 1957 was concerned with giving relief to some aliens who had entered this country by illegal means and established families here. But the people who were to benefit from this genuine human concern were those

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[6] Under § 7 of the 1957 Act certain aliens had to establish both that they were "otherwise admissible" and that they had not lied to evade quota restrictions. The Court reasons from this that quota restrictions are not embodied in the "otherwise admissible" qualification. But this reasoning is inconsistent with the Court's conclusion concerning the general applicability of § 241 (f), discussed in Part I of this dissent.

Section 7 of the earlier Act provided as follows:

"The provisions of section 241 of the Immigration and Nationality Act relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as (1) aliens who have sought to procure, or have procured visas or other documentations, or entry into the United States by fraud or misrepresentation *or* (2) aliens who were not of the nationality specified in their visas, shall not apply to an alien otherwise admissible at the time of entry who . . . ."

If the present meaning of "otherwise admissible" is to be determined by the 1957 Act, so then must other parts of the statute be similarly determined. Section 241 (f) begins with words almost identical to those quoted above. But the second ground of applicability—to "aliens who were not of the nationality specified in their visas"—is omitted. Thus, lies about nationality were not forgiven by the first part of the 1957 Act and are not, by the Court's reasoning, excused by § 241 (f), the successor statute. And since there is nothing to distinguish lies about nationality that avoid quota restrictions from other lies with the same effect, the reasoning that leads to the Court's conclusion that the aliens were "otherwise admissible" leads also to the conclusion that § 241 (f) is not applicable at all in these cases.

from countries like Mexico, which had no quota restrictions, and those who had misrepresented their national origins in order to avoid repatriation to Iron Curtain countries. There is nothing to indicate that Congress enacted this legislation to allow wholesale evasion of the Immigration and Nationality Act or as a general reward for fraud.

I respectfully dissent.